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Massachusetts Law Quarterly

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INHERITANCE TAXES
NOTICE FROM COMMISSIONER OF TAXATION

December 8, 1955.

To All County Bar Associations:

The State Tax Commission is planning to institute certain corrective measures to relieve the existing congestion in the Boston Office of the Bureau of Inheritance Taxes.

Initially, these measures will involve the processing of certain types of inheritance tax cases at the local registries of probate. In this way, the necessity of making expensive and time-consuming trips to Boston will be eliminated and the delays incident to the processing of cases will be substantially reduced.

Under the proposed plan, field agents of the Bureau will be present at the various Registries of Probate on a pre-arranged schedule and will be authorized to handle inheritance tax matters excepting cases involving substantial amounts of taxes, complex legal questions or complicated computations.

Appropriate regulations covering the new procedure together with a schedule of the field agent's appearance in the several counties will shortly be posted in the Registries of Probate.

It is hoped that this procedure may prove to be of real service to your membership and that if successful, it may become a permanent feature of the department's operations.

JOHN DANE,
Commissioner, Department of Corporations and Taxation.

A TIMELY PRAYER
(From the Boston Herald)

The following "Motorist's Prayer" merits the attention of every driver not only on Safe Driving Day but day in and day out.

"Grant me a steady hand and watchful eye, that no man shall be hurt when I pass by.

"Thou gavest life, and I pray no act of mine may take away or mar that gift of Thine.

"Shelter those, dear Lord, who bear me company from the evils of fire and all calamity.

"Teach me to use my car for others' need, nor miss through love of speed.

"The beauties of the world; that thus I may with joy and courtesy go on my way."

BEN KUBLIN, Mattapan.

AMERICAN BAR ASSOCIATION MEMBERSHIP CAMPAIGN

The President of the American Bar Association has appointed Raymond F. Barrett of Quincy as State Chairman for Massachusetts, in the campaign for 50,000 new members within the next few months. Ralph G. Boyd is the Metropolitan Chairman for the Boston area. *Help them.*

REASONS FOR JOINING THE AMERICAN BAR ASSOCIATION

To Those Who Are Not Members

From the "Quarterly" for April 1954 (Vol. 39, No. 2)

Without using dramatic adjectives or adverbs, or what may seem exaggerated phrases, we simply suggest for your consideration, without urging, that it is worth while to join for the following reasons:

We joined the American Bar Association in 1907. We have attended most (not all) of its meetings since then, and also of the commonly forgotten National Conference of Bar Association Delegates from 1916 to 1936, which conducted preliminary discussions of matters which later came before the larger organization. We have served as a member of the House of Delegates since its creation in 1936, and have sat through practically all of the sessions of its constantly changing membership, taking a more or less active part in committee work and its vigorous debates in the House with some defeats and occasional successes. Thus we have seen its work and influence develop and its membership grow until it now numbers over 50,000.

We live at a time when bar organizations are needed primarily for the public professional service justly expected of the legal profession, but also for the incidental and often indirect but great and continuous service to the lawyers—a service far greater than many of them realize. We know at first hand, from personal observation and contact, of the devoted service of a long succession of men who helped, during half a century, to build the association gradua'ly in the face of professional inertia and other discouraging factors. To the careful work of the Taxation Section alone, lawyers throughout the nation are indebted for more than the annual dues, on their own account and on that of their clients in connection with Federal tax work. Such an organization depends on membership dues. It is no more perfect than other human institutions. You may disagree with this or that action on controversial matters, but so what? You probably do that in other organizations. But the American people and the American Bar, including you, need the services of the American Bar Association as they need those of state and local associations. You can get those services for nothing or you can help. The dues are $16.00 a year. F. W. G.

There will be a regional meeting of the American Bar Association for members in the six New England states and New York in Hartford, April 15-18.

The Formation
of the
Massachusetts Constitution

An address at the 175th Anniversary of the Constitution on October 25th, 1955

by

SAMUEL ELIOT MORISON

A MESSAGE FROM PRESIDENT EISENHOWER TO THE MASSACHUSETTS BAR ASSOCIATION OCTOBER 25, 1955

"Please extend my greetings to those who join in the celebration of the one hundred seventy-fifth anniversary of the Constitution of Massachusetts. The preparation and adoption of this document, in the midst of the war for independence, greatly furthered the development of constitutional government in America—Government deriving its just powers from the consent of the governed and operating under fixed principles of law which define and secure the rights of the citizens. I hope that your observance will inspire others—within and beyond the Commonwealth of Massachusetts—to renew their acquaintance with the fundamentals of our system, that they may continue to uphold them intelligently and steadfastly through the coming years."

"DWIGHT D. EISENHOWER."

Thomas Hollyman

SAMUEL ELIOT MORISON

Admiral Morison is more than a "scholar, writer and sailor of the ocean sea" as one of his many book jackets declares. As a figure in the modern world of letters he has cut channels for our thoughts through the backgrounds of history and brings us with a fresh start to the present.

The University of California, Harvard and Oxford, have felt the impact of a scholar so alive to his work that in preparing to write a life of Columbus he, like Columbus himself, made four voyages of discovery. He crossed the Atlantic from New England to Lisbon and from Palos through the West Indies to Trinidad, and traced the routes of the "Admiral of the Ocean Sea." As historian of the United States Navy he has just finished ten volumes on the Navy's activities in the late war.

A distinguished authority on the Constitution of our Commonwealth, he wrote the history of the Constitution, as a labor of love, which was drawn on by the last Constitutional Convention of information and inspiration.

He is the author of the *Maritime History of Massachusetts, The Growth of the American Republic, Life of Harrison Gray Otis, Builders of the Bay Colony,* the *Tercentennial History of Harvard University* (5 vols.), *Puritan Pronaos, Admiral of the Ocean Sea* (2 vols.), *Christopher Columbus, Mariner,* and *History of the United States Naval Operations in World War II* (10 vols. and 4 to come).*

*Morison, then Jonathan Trumbull, Professor of American History at Harvard, was convinced that too many histories were written from the outside looking in. He felt that more was to be gained by writing in contact with the events. Just after Pearl Harbor, he went to President Roosevelt with his idea. The President was enthusiastic. So was Secretary Knox. Before he knew it, he was Lieutenant Commander Morison, USNR, with the active writing assignment that he had suggested. For the remainder of the war, he spent more than half of his time at sea, with active duty on eleven different ships, emerging a captain, with seven battle stars on his service ribbons. He was present at Operation TORCH (the North African invasion); he served on Atlantic convoys, and his journeyings took him through most of the combat areas of the Pacific during the height of the conflict. He is now on the Navy's Honorary Retired List as Rear Admiral.

A CONSTITUTION OR FRAME OF GOVERNMENT, Agreed upon by the DELEGATES of the PEOPLE of the STATE OF MASSACHUSETTS-BAY,—*In Convention*,—Begun and held at *Cambridge*, on the First of *September*, 1779, and continued by Adjournments to the Second of *March*, 1780.

PREAMBLE

The end of the institution, maintenance and administration of government, is to secure the existence of the body-politic; to protect it; and to furnish the individuals who compose it, with the power of enjoying, in safety and tranquillity, their natural rights, and the blessings of life; And whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body-politic is formed by a voluntary association of individuals: It is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a Constitution of Government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the Great Legislator of the Universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new Constitution of Civil Government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, DO agree upon, ordain and establish, the following *Declaration of Rights, and Frame of Government*, as the CONSTITUTION of the COMMONWEALTH of MASSACHUSETTS.

(As submitted by the convention to the people in their town meetings and ratified in 1780.)

The sentence about "Social Compact" in the second paragraph of the "Preamble" is sometimes misunderstood. It is simply an 18th Century way of saying what President Grover Cleveland and others have said more briefly and clearly for us, that "Public Office is a public trust" and "a trust" is the highest form of "compact" known to the law today.

F. W. G.

ADDRESS AT 175th ANNIVERSARY OF CONSTITUTION OF MASSACHUSETTS 25 OCTOBER 1955

by

SAMUEL ELIOT MORISON

I. THE AMERICAN REVOLUTION FRUITFUL IN CONSTITUTIONS

Over forty years ago a striking tribute was paid to our Constitution by the leading American political scientist, Andrew C. McLaughlin of Chicago. In his presidential address before the American Historical Association he said:—

"If I were called upon to select a single fact or enterprise which more nearly than any other thing embraced the significance of the American Revolution, I should select—not Saratoga or the French Alliance, or even the Declaration of Independence—I should choose *the formation of the Massachusetts Constitution of 1780*; and I should do so because the constitution rested upon the fully developed *convention*, the greatest institution of government which America has produced, the institution which answered, in itself, the problem of how men could make governments of their own free will . . ."[1]

What a remarkable thing, that the very people who started the American Revolution, the revolutionary radicals of 1776, should have shown such original and constructive genius in political science. As all modern history shows, it is easy enough to destroy a government when it has become obsolete and ineffective, but very difficult to re-establish the reign of law and order on a new foundation. How many nations in the present century have won their independence; how few have really secured their liberty! And it has almost seemed to be a law of revolutions that they go from one excess to another, and end in a new despotism. As Hosea Biglow taunted the ghost of his Cromwellian ancestor:—

You took to follerin' where the Prophets beckoned,
An, fust you knowed on, back come Charles the Second.[2]

The American Revolution developed very differently. The link with Britain was broken, but the Thirteen States remained united. Royal government was abolished, but republican government was established, and on a firm foundation. At the end of the war, eleven of the thirteen states had adopted new constitutions; and of these constitutions, that of Massachusetts, whose 175th anniversary we celebrate today, has been the most enduring because it was the best. One hundred and seventy-five years is a short time in history, but a great age for a written constitution. How true was the characteristically tactless greeting of President Charles W. Eliot to Prince

[1]American Historical Review XX 264.

[2]James Russell Lowell "Biglow Papers" 2nd series, *Poetical Works* II (1892) 330.

Henry of Prussia when he made a state visit to Boston in 1902:—"Our ancient Commonwealth greets your recent Empire!"

We all take this *constructive* aspect of our Revolution too much for granted. So I propose to inquire *why* we were so successful in establishing government under law.

In the first place, the leaders of the American Revolution were deep students of history and of politics, they not only knew what had to be done, but were eager for the task. Take, for example, two of our most flaming patriots, Thomas Jefferson and John Adams. Jefferson on 16 May 1776 when he was working hard in the Continental Congress to have Independence declared, wrote to Thomas Nelson in Virginia that he regarded the making of a constitution for Virginia even more important than Independence:—"In truth it is the whole object of the present controversy; for should a bad government be instituted for us in future it had been as well to have accepted at first the bad one offered to us from beyond the water without the risk and expense of contest."[1] And John Adams, even earlier in 1776, wrote to George Wythe who had asked his advice about a new Virginia constitution, "You and I, my dear friend, have been sent into life at a time when the greatest lawgivers of antiquity would have wished to live. How few of the human race have ever enjoyed an opportunity of making an election of government . . . for themselves or their children! When, before the present epocha, had three millions of people full power and a fair opportunity to form and establish the wisest and happiest government that human wisdom can contrive?"[2]

Prophetic words; for within four years John Adams had the opportunity to draft a constitution for his own beloved and native state.

The first reason, then, why Americans were able to establish government under law for themselves was the conviction of leading Revolutionists that it must be done, and their knowledge of how to do it.

II. Government Under Law a Massachusetts Tradition

A second and perhaps even more fundamental reason was the long experience of Americans with self government, and with government under law, before 1776. "We began with freedom," wrote Ralph Waldo Emerson. How true that is! The Virginia Assembly from 1619, the Mayflower Compact of 1620, the Massachusetts Body of Liberties of 1641, the Plymouth "General Fundamentals" of 1636.[1]

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[1]Julian P. Boyd ed. *Papers of Thomas Jefferson* (1950) I 292.

[2]John Adams "Thoughts on Government" in *Works* (1851) IV 200.

[1]William Bradford *History of Plymouth Plantation* (Ford ed., 1912) II 237-41, reprinted from the 1685 ed. of *The Book of the General Laws of New-Plimouth.* The heading is, "The General Fundamentals. Anno 1636. Revised 1671." Some of these fundamental laws, therefore, may not have been adopted before 1671.

Almost a century and a half before the Revolution, the Old Colony adopted as fundamental law, annual elections, no taxes to be laid or laws passed without the consent of the Freemen or their representatives, no person to suffer "in respect of Life, Limb, Liberty, Good Name or Estate," (and please note that "good name"); "but by Virtue or Equity of some express Law of the Colony," or the English Common Law, and by "due course and process of Law." The Plymouth Fundamentals of 1636 guaranteed trial by jury, and declared that nobody should be found guilty without the testimony of "two sufficient witnesses . . . or circumstances equivalent thereunto." A few years later, when (believe it or not!) there was an outbreak of juvenile crime in Plymouth, Governor Bradford asked the ministers whether he could legally have torture applied to an arrested youth to force a confession; they all replied No, he couldn't do that because it was a maxim of English common law, *nemo tenetur prodere seipsum*—No man may be compelled to accuse himself.[1] That is exactly the same provision which in Article V of the Federal Bill of Rights has become so controversial in our own time.

Because the people of Massachusetts had always enjoyed government under law, and a very substantial measure of self-government as well, they not only resisted the efforts of George III to govern them by arbitrary authority, but they insisted on securing government under law for themselves. That conviction was not only an intellectual one held by students of government; it went right down to the grass roots, as may be seen by a resolution passed by the small country town of Medfield in 1776:—

"While we profess ourselves advocates for Rational Constitutenal Liberty we dont mean to patronise Libertinesm and Licenteousness we are sensible of the necessety of Goverment for the Security of Life Liberty and property and mean to vindecate and Submit to all Lawful Constitutanal authority."[2]

III. The Constitutional Convention Idea

And it was from the grass roots, not from some eminent leader of political thought, that the idea of a constitutional convention came. For the process of making constitutions was very little understood in 1776. In several of the states, a constitution was drafted by the legislature and placed in effect without consulting the people.

On 29 May, 1776, the town of Pittsfield sent a memorial to the General Court that laid down the following principles:—

1. "The people are the fountain of power."

2. The colonial "Compact"—i. e., the Province Charter of 1691—was dissolved by George III breaking it; and the General Court has no right to assume that it is still in effect—as, in fact, they were

[1]Same, II 316-26; or Morison ed. (1952) pp. 405-12.

[2]Harry A. Cushing *History of Transition from Provincial to Commonwealth Government in Mass.* (1896) p. 12 note 4.

doing. The State was governed from 1775 to 25 October 1780 by what one might call a decapitated Province Charter. The Royal Governor and Lieutenant Governor were regarded as "absent," so the Council of 28 members acted as executive board, and the House carried on as before.

3. The General Court should frame "a fundamental constitution as the basis and frame-work of legislation" and refer it to the people for their "approbation," for only the consent of a majority can "give life and being to it."[1]

Thus Pittsfield started the movement for popular ratification, but not for a constitutional convention. The General Court on 17 September 1776 requested the people of the State to authorize it, the legislature, to draft a constitution. The war was so hot in 1776 that only about half the towns voted on this proposition. Most of those that did so, said in effect, "Go ahead; but let us have a look at it before it becomes Fundamental Law." But three towns, in replying to this request, made the pregnant suggestion that a legislature was no proper body to draft a constitution, that a constitutional convention should be elected for that special purpose. The three towns that passed resolutions to that effect were:—

Middleborough, 7 October 1776

Concord, 21 October 1776

Acton, 4 November 1776

Who started this idea we do not know. We wish we did, because these three town meeting resolves are the earliest suggestions yet discovered in America of a Constitutional Convention.

In Middleborough a committee of which George Leonard was chairman reported, and the Town adopted, a resolve to the effect that they were willing to have the Legislature draft a constitution, if submitted to the people for ratification. But, they added, "We think it would be rather Preferable to Select a body of men, some from each County, whose sole business it should be to strike out or Plan a New Constitution subject to the Consent, the approbation or disapprobation, both of the Court and People."[2]

The Concord resolves, most explicit of the three,[3] made a very persuasive argument for a specially elected Convention as being the only proper body to draft a Constitution. Concord also proposed that the Convention be elected by manhood suffrage, not by the property qualification that still obtained in state elections; and it suggested the mode of ratification actually adopted in 1780.

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[1]S. E. Morison *History of Constitution of Massachusetts.* (reprinted from the Manual for the Cont. Com. 1917) pp. 13-14.

[2]Ms. town records Middleborough.

[3]Printed in S. E. Morison ed., *Sources and Documents Illustrating the American Revolution* p. 177, and in facsimile in *Manual of the Constitutional Convention of 1917.* The Acton resolves were based on those of Concord. The Middleborough resolve has never been printed.

These Concord resolves were drafted by a committee consisting of Colonel John Buttrick, who had commanded the Minute Men in Concord Fight; Colonel James Barrett and his son, both farmers; Ephraim Wood, the village shoemaker; and Nathan Bond, a 24-year-old Harvard graduate who is described as a merchant. These men deserve eternal fame, for they set up one of the title pages of democracy.

The General Court disregarded the good advice of these three towns and itself drafted a very inferior constitution which, when submitted to the people, was rejected by a vote of about five to one. The General Court then took up the suggestion of Middleborough, Concord and Acton, and by a resolve dated 19 February 1779, requested the people to decide in their town meetings whether or not they wished to elect a constitutional convention. They voted for it two to one; the three western counties of Worcester, Hampshire and Berkshire being almost unanimously in favor. And those that opposed did so on the ground that we had better win the war first. Next, the General Court ordered the towns to elect as many delegates to the Convention as they were entitled to send representatives; and it expressly declared that all free men 21 years of age and upward could vote.

IV. The Convention of 1779-80

There was a general response to this invitation. Very few towns were unrepresented except those in Eastern Maine, the Island counties and Cape Cod, which were pretty much cut off by the war. No fewer than 293 delegates from 190 different towns attended the first session, which convened at the meeting house of the First Church in Cambridge at Harvard Square, on 18 September 1779.[1] The Convention met at Cambridge because there was a rumor that the British were planning to attack Boston. Had they done so, and succeeded, they would have made a rich haul of Bay State patriots! Boston sent as delegates Samuel Adams, John Hancock, James Bowdoin, Samuel A. Otis, John Lowell, Dr. Charles Jarvis, Samuel Barrett and Thomas Dawes—but not Paul Revere, who was then under a cloud for his part in the Penobscot Expedition. John Adams came from Braintree and Edward Hutchinson Robbins from Milton. Essex County had an equally distinguished delegation:—Stephen Choate, Samuel Phillips, Henry Higginson, Benjamin Goodhue, George Cabot, Winthrop Sargent and Samuel Holton, among others; and Middlesex sent James Sullivan, Nathaniel Gorham and Ephraim Wood of Concord. Plymouth sent John Cotton. York, Maine, sent Judge David Sewall; from Taunton came Robert Treat Paine, signer of the Declaration of Independence. Worcester County sent no fewer than 63 delegates, including Levi Lincoln and David Bigelow. From

[1] *Journal of the Convention for Framing a Constitution of Government for . . . Mass. Bay* (Boston, 1832).

Old Hampshire came William Pyncheon, Luke Bliss, Colonel John Moseley and Caleb Strong. Berkshire sent Dr. William Whiting, Colonel Jonathan Smith and William Williams, signer of the Declaration of Independence. All the Massachusetts "signers" were there except Elbridge Gerry, who with Artemas Ward and James Lovell was then representing the State in the Continental Congress. Almost every leading patriot of Massachusetts not then serving in the Army or Navy or in Congress was elected a delegate.

One advantage of the Convention over the Legislature for framing a constitution was the possibility of electing as delegates judges, clergymen and others who were disqualified for the Legislature. The Convention of 1779 contained about fifteen judges, including the then Chief Justice of Massachusetts, William Cushing of Scituate, and a future Chief Justice, Theophilus Parsons of Newburyport. There were also twelve or thirteen clergymen, including such well known figures as the Rev. Samuel West of Dartmouth and the Rev. Gad Hitchcock of Pembroke, the Rev. Jonas Clarke of Lexington, the Rev. Peter Thatcher of Malden. Among the delegates were a future President of the United States (John Adams), five future governors of the Commonwealth (Hancock, Samuel Adams, Bowdoin, Sullivan, Strong), a future United States Senator (George Cabot), and several future congressmen. John Lowell became a federal judge and Cushing an associate justice of the Supreme Court of the United States.[1] No debates in the Convention were reported or published.

The First Session, in Cambridge, lasted only a week. After organizing, and electing James Bowdoin president and Samuel Barrett secretary, the Convention appointed a Grand Committee of Thirty to prepare a draft, spent a day in "a general and free conversation which lasted until sunset," and adjourned on 7 September. The Grand Committee met shortly after at the old court house on the site of Boston City Hall and delegated its duties to a subcommittee consisting of President Bowdoin and the "brace of Adamses." That subcommittee, following the precedent of the one that drafted the Declaration of Independence, delegated its functions to the one member most capable of executing them—John Adams of Braintree.

V. John Adams and His Basic Principles

John Adams, now forty-three years old, was undoubtedly the greatest expert on constitutions in America, if not in the world; if any proof were needed of this proposition, the age of our Constitution is sufficient. Since his college days he had studied constitutions, ancient and modern, had read almost every book ever written on political theory, in the English, French, Latin and Greek languages; and, what is more, he had thought deeply about politics. Moreover, John was no doctrinnaire or "egg-head," to use the current term. A practising lawyer for at least twenty years, he knew the good and the bad in human nature, and had no illusions about

it. He had served in our General Court and in the Continental Congress, and had plenty of experience of practical politics and politicians. Ambitious, hard-headed and irascible, rough and often rude in his manner, conscious of his own merit and contemptuous of intellectual inferiors, intolerant of weakness—qualities which you can discern in that magnificent portrait of him by Mather Brown, reproduced in your pamphlet—John Adams had an essential greatness that transcended all his qualities and defects. His cousin Sam and his friend Bowdoin were very wise to "let John do it," not only because John knew best, but because he never worked well in a team.

Adams' draft,[1] and the finished Constitution, are logically divided into two co-equal parts, the "Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts," which we may call the negative part as it was largely a limitation on the powers of government; and "The Frame of Government," the positive part, stating what the government's powers are, how they are to be exercised and distributed among the three departments, and how the officers exercising these powers shall be chosen.

If John Adams' Declaration of Rights has been less amended than any other part of the Constitution, it is because the Rights he enumerated were the result of the experience of centuries. These Rights were, in brief, freedom of worship, free elections, freedom from general warrants or unreasonable searches, equal protection of the law, habeas corpus,[2] and not to "be compelled to accuse, or furnish evidence against himself"—again, old *nemo tenetur prodere seipsum*, which would be incorporated in the Fifth Amendment to the Federal Constitution. Several of these rights were taken from constitutional charters of English Liberty such as the Bill of Rights of 1689, and the Great Charter of 1215; many had already been adopted in the Virginia Bill of Rights.

The philosophical basis of these Rights is the ancient theory of Natural Law, or the Law of Nature; that Almighty God dictated the fundamental decencies of human intercourse, which men and governments should respect. This concept is even older than Christianity; it goes back to the Greek civilization to which we are heirs.

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[1]Adams' Draft as it was issued from committee—and it was very slightly amended in committee—is printed in his *Works* (1851) IV 213-67, with no'es by Charles Francis Adams and notation of changes made by the Convention in the Draft. For instance, in Adams' draft, Art. I of the Declaration of Rights began, "All men are born equally free and independent," which the Convention changed to, "All men are born free and equal." It was by virtue of this clause that Chief Justice Cushing in 1783, in the famous Quork Walker case, declared that slavery could not exist in Massachusetts. See Edward Channing *History of the United States* III 559.

[2]It is interesting, and has never been explained, why the right to the writ of habeas corpus, which of all political rights most distinguishes a free government from an arbitrary one, was not placed by Adams in Part I but in Part II chap. vi sec. 7. But it was included neither in the Virginia nor the Pennsylvania Declaration of Rights of 1776.

One of the finest expressions of it is in Sophocles' *Antigone*. The heroine of that powerful tragedy, Antigone, has disobeyed a law of the tyrant Creon, ordering the bodies of his political rivals to be dismembered and thrown to the dogs. One of the victims was her brother Polyneices; and in defiance of Creon's edict she has salvaged her brother's remains and given them decent burial. Brought before Creon, she is accused of violating the law, to which she replies:—

> "Yea for *thy* laws were not ordained of Zeus,
> And Justice, who sits high amongst the gods
> Has naught to do with unjust laws of men.
> Nor did I think that thou, a mortal man,
> Had power to declare both null and void
> The unchangeable, unwritten laws of Heaven.
> They were not born today, nor yesterday;
> They die not, and none knoweth whence they sprang."[1]

It is a long way indeed from ancient Greece to 1780, but John Adams' Declaration of Rights stems from the same source as Antigone's dramatic challenge to the tyrant. Our Declaration of Rights opens with thanksgiving to "the great Legislator of the Universe" that he had afforded the people of Massachusetts this opportunity to form "a new constitution . . . for ourselves and posterity"; and a prayer "devoutly imploring His direction in so interesting a design." We can find few finer statements in modern history of the "unchangeable, unwritten laws of Heaven" than the Massachusetts Declaration of Rights.

VI. A "Mixt Government"

Now for the Frame of Government. Adams' draft, adopted in substance by the Convention, was based on an ancient theory first made popular by the French publicist Montesquieu. The theory of "mixt government," as it was called in the eighteenth century, is akin to but not exactly the same as our theory of "checks and balances." In brief, it was this:—Any *pure* form of government such as absolute monarchy, hereditary aristocracy or unlimited democracy, may theoretically be good, yet actually is bad because, owing to the corrupting influence of power, it always degenerates into some different and abominable form. Pure monarchy degenerates into despotism; pure aristocracy into a selfish oligarchy, and pure democracy into mob rule or anarchy. Hence a government, to secure the happiness of the people, should be given a form that is a mixture of the three. Thus, you should have a strong chief executive to represent the monarchical principle, a senate to represent the aristocratic principle, and a house of representatives to represent the democratic principle. Finally, as a balance wheel to the whole, there should be an independent judiciary to see that the Constitution is observed, and that the rights of the people are protected against the government.

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[1] *Antigone* lines 450-58; my translation.

John Adams had come to believe in this theory of "mixt government" almost passionately. It was the theory behind the Frame of Government in the Massachusetts Convention of 1780, and the theory behind the Federal Constitution of 1787. Our Constitution of 1780 did not set up a democracy, it was not intended that it should; but a mixed government in which democracy had a part, and an essential part, in the lower House and in annual elections. But this democratic element was balanced by giving the Governor a greater power than the first magistrate of any other state; by apportioning the State Senators in districts determined by wealth, not population, and by a high property qualification for candidates— £1000 ($3,333) real estate for Governor— and £300 ($1000) real estate for Senator; greater than in any other of the Thirteen States except South Carolina and Maryland. This method of apportioning State Senators worked out in practice, during the first twenty or thirty years of the Constitution, so that the coastal counties except Maine had twenty-five senators and all the rest, fifteen.

Even without an absolute veto, the Governor of Massachusetts was the most powerful chief executive in the United States; and, so great was the fear of one-man power at the time, the Convention could only be persuaded to set up a strong governor because he would be elected annually. For Montesquieu had written, "In every magistracy one must balance the greatness of power by the shortness of its duration. One year is the term that most legislators have fixed. A longer term would be dangerous, a shorter one, against nature."

The Convention made no apology for this being a "mixt" and not a democratic constitution. The address which accompanied the printed copies of the Constitution that were sent to the towns for discussion, stated:—"The powers of government must . . . be balanced. . . . The House of Representatives is intended as the representative of the persons, and the Senate of the property of the Commonwealth." Each is given a negative on the other because "all bodies of men . . . united by one common interest . . . are liable, like an individual, to mistake, bias and prejudice." Defending this system, the Convention's Address says, "when the same man or body of men enact, interpret and execute the laws, property becomes too precarious to be valuable, and a people are finally borne down with the force of corruption resulting from the union of those powers." That is exactly what happened in the governments of Nazi Germany, Soviet Poland and Argentina Peronista.

It has often been said that checks and balances were devised to prevent anything being done; to make government impotent. That is not true. Article IV of the Declaration of Rights expressly says that the people of this Commonwealth "do, and forever hereafter shall, exercise and enjoy every power, jurisdiction and right which is not, or may not hereafter be by them expressly delegated

[1]Montesquieu *De E'sprit des Loix* liv. ii chap. 3 (1759 ed. I24)

to the United States of America." The Frame of Government, Chapter I section 1, article iv, confers on the General Court complete legislative power "as they shall judge to be for the good and welfare of this Commonwealth, so as the same be not repugnant or contrary to this Constitution." And section ii d Chapter V, which John Adams said was his favorite article, enjoined the General Court "to cherish the interests of literature and the sciences, and all seminaries of them, especially the University at Cambridge, public schools and grammar schools; . . . to encourage . . . the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country," as well as to "countenance and inculcate . . . sincerity, good humor, and all social affections, and generous sentiments, among the people."

John Adams was a stickler for traditional forms and phrases. He believed, like Hosea Biglow,

> Th' older a guv'ment is, the better 't suits;
> New ones hunt folk's corns out like new boots:
> Change jes' for change, is like them big hotels
> Where they shift plates, an' let ye live on smells.[1]

He studied the texts of the Old Colony Charter of 1629 and the Province Charter of 1691, and incorporated as much of them as he thought would suit new conditions. Elections were annual, not because Montesquieu recommended it, but because Massachusetts had had annual elections since 1630. "Where annual elections end, there slavery begins," was a favorite maxim of John Adams. The titles His Excellency and His Honor for Governor and Lieutenant Governor were those of the Royal Governor and Lieutenant Governor under the Province Charter. The name of our Legislature, the General Court, goes back to the Massachusetts Bay Company of 1629. The property qualification for the franchise—real estate worth £3 ($10) a year—is the old 40-shilling franchise of the Second Charter, which in turn was taken from the county franchise in England. If Governor Herter is surprised to read in Chapter II section I article vii that he has power to "assemble in martial array and put in warlike posture, the inhabitants," and in his proper person "to lead and conduct them . . . to encounter, repel, resist, expel, and pursue, by force of arms, as well by sea as by land . . . and also to kill, slay, and destroy, if necessary, and conquer, by all fitting ways, enterprises, and means whatsoever, all and every such person and persons as shall, . . . in a hostile manner, attempt or enterprise the destruction, invasion, detriment, or annoyance of this commonwealth"; it is because the Governor and Company of the Massachusetts Bay had been granted these warlike powers and duties in those very words, in 1629.[2]

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[1] Lowell *Poetical Works* II (1892) 265.

[2] *Charter and General Laws of the Colony and Province of Massachusetts Bay* (1814) pp. 15-16; also in the Province Charter of 1691, ibid., p. 35.

Since the Declaration of Independence, the body politic had officially been styled the "State of Massachusetts Bay"; but John Adams, following the precedent of Virginia, substituted for State, *Commonwealth*, a dignified rendering of the Latin *res publica*, and one with many historical associations. At the same time he managed to defeat a proposal to change the name Massachusetts Bay to *Oceana*. Some pedantic member (a reader, doubtless of Harington's great treatise of that name) proposed Oceana, and several members of the Committee of Thirty were in favor of thus renaming the State;[1] but John Adams would have none of it. Massachusetts-Bay this body politic had been for 150 years, and the only concession he would make was to lop off the "Bay," which satisfied members from the interior. The motion for *Oceana* was made and seconded at the Convention on 9 November 1779, but "passed in the negative."

I need hardly remind you that our Constitution, while retaining the original Separation of Powers "to the end that it may be a government of laws and not of men" (Declaration of Rights Article XXX), is no longer a "mixt" but a democratic constitution. By the process of amendment over a period now of 134 years, the Governor's power has been clipped by depriving him of the power to appoint the Attorney General and all County officers such as sheriffs. The Senate as well as the House is apportioned according to population, not wealth; all property qualifications have been abolished and universal suffrage prevails in all elections. Yet, I think that John Adams would still recognize today's Frame of Government as his; because the chapter on the judiciary has been maintained intact. That is really the keystone to the arch.

VII. The Vote of the Towns[2]

The Second Session of the Convention, held at Cambridge between 28 October and 12 November 1779, was devoted entirely to a discussion of the Declaration of Rights. John Adams sailed for France in the *Sensible* to help Benjamin Franklin to negotiate a treaty of peace, on 13 November 1779, and was not present at the Third Session when his Frame of Government was debated and amended.

This Third Session began 27 January 1780 and was held at the Old State House in Boston, which by that time was considered to be reasonably safe from invasion. The session opened three weeks late because of the hard winter. Many members from the interior could not get to Boston because the highways were completely snowed under. Transportation was almost as difficult as in October 1955!

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[1]H. A. Cushing *Transition* p. 238, quoting a letter of Caleb Strong, 25 Oct. 1779, to Joseph Hawley, in the Hawley Mss. New York Public Library.

[2]For full details on this subject see my article "The Struggle over the Adoption of the Constitution of Massachusetts," *Proceedings* Mass. Historical Society L 353-411 (May, 1917). It has recently been covered by Elisha P. Douglass *Rebels and Democrats* (Univ. of N. C. Press 1955).

But by 20 January the post road from Hartford to Boston was open for sleigh traffic, and if you could get to Hartford on snowshoes it was only a three-day sleigh ride thence to Boston. Only 60 members were present on 27 January; and in spite of frequent and vigorous appeals for better attendance, it never rose above 82. Possibly that is why such an unusually small quorum—sixty members—was required in the Constitution for the House of Representatives. The Convention naturally thought that if sixty men could adopt a Frame of Government, sixty men were enough to pass laws.

In this third and ill-attended session, the Convention adopted the peculiar method by which the Constitution was ratified. The resolution, drafted by a committee composed of James Sullivan, John Lowell and Robert Treat Paine, followed the Concord recommendation of 1776, "that when the Convention . . . have formed a Constitution, they adjourn for a short time and publish their proposed Constitution for the inspection and remarks of the inhabitents of this State."[1]

The method was this. The Convention adjourned on 2 March 1780 to 7 June. In the meantime printed copies of the Constitution were distributed to every town and plantation, and the selectmen were requested to hold a special town meeting to discuss and vote on it, article by article. "And if there doth not appear to be two thirds of their constituents in favour thereof, that the Convention may alter it in such manner as that it may be agreeable to the Sentiments of two thirds of the voters throughout the State."[2]

This method seems unnecessarily complicated; but one can see why it was adopted. Since the break-up of royal authority in 1774, the towns had acquired more power than ever before, and were jealous of it. The emphatic vote with which they rejected the 1778 draft constitution suggested that the same thing would happen to this one if it were submitted "in a lump," as the town of Pittsfield expressed it. Giving the people an opportunity to discuss the proposed Constitution and to present objections and suggestions to the Convention not only pleased them, but gave the malcontents an opportunity to blow off steam. And the Convention, by reserving to itself, at an adjourned session, the right to canvass the returns, amend and ratify, made certain that its work would not be lost; that *a* constitution would be adopted, if not *the* constitution which they had drafted. Any particularly unpopular article could be modified or struck out, without jeopardizing the whole.

There was no *public* contest over ratifying the Constitution. In an era when political pamphlets proliferated, only two against the Constitution, and none for it, were published. The six weekly newspapers then published in Massachusetts (all but one in Boston) made little or no mention of it; their meager columns, crammed full

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[1]Morison *Documents* p. 177. A more detailed but later suggestion of this method came in the instructions of the Town of Pittsfield to its delegate.

[2]*Journal of the Convention* p. 169.

of war and foreign news, found room only for two series of articles on the Constitution, both confined largely to a discussion of Article III of the Declaration of Rights. The series attacking it was written by a member of the Convention who signed himself "Philanthropos," and whom I suspect to have been the Rev. Noah Alden, the Baptist minister of Bellingham, who was chairman of the committee that drafted Article III. "Philanthropos" was answered by another member who called himself "Iraenius," who was probably Robert Treat Paine.[1]

No members of the Convention stumped the State, on snowshoes or otherwise, to argue pro or contra; but each member must have been a center of discussion in his home town. Until I discovered the returns from the towns in the Massachusetts Archives, historians had assumed that there was no contest; that the Constitution "went over" easily. That is far from the truth. There was strong opposition to the Constitution, and part of it can be definitely traced to two men who were not members of the Convention. These were Joseph Hawley of Northampton, the patriot leader known as the "Hampshire Cato," and the Rev. Isaac Backus, the Baptist minister of Middleborough and leader of the Baptists in New England. One of the two pamphlets attacking the Constitution was written by the Rev. Mr. Backus,[2] the other was a reprint of the "Philanthropos" articles from the Boston *Independent Chronicle.*

The towns had about three months in which to discuss the Constitution, and they took full advantage of it despite the long, hard winter and the generally unfavorable war news. Returns were expected from 290 towns. No fewer than 188 are preserved in the State Archives, I have personally unearthed about 40 more,[3] and probably at least 25 others have been lost. These returns reveal an amazingly keen interest in constitutional subjects throughout the State, and a high degree of political intelligence among the people. The degree of interest varied, as we would suspect. It was highest in Boston, in Old Hampshire and Berkshire Counties, and along the Rhode Island border. In Boston about a thousand men turned out for town meetings that rocked the Cradle of Liberty for the better part of three days; and no fewer than 887 men voted. In Rehoboth 455 people voted; South Hadley held seven town meetings before it could come to a decision. But in some important towns very little interest was shown. At Plymouth, for instance, only 37 voters from a population of over 2600 attended; and at Biddeford, Maine, only 10 out of more than 1000. "We regret so few are met," reads the Biddeford return; but "Ten men may save the city."

The tone of all but a few returns was respectful, even deferential.

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[1]Paine was also a member of the committee that drafted Art. III, and Paine had already "tangled" with the Rev. Isaac Backus on that subject.

[2]*Policy as well as Honesty, forbids the use of Secular Force in Religious Affairs* (Boston 1779). Moreover, Backus may have been "Philanthropos."

[3]Copies of these are in the Library of the Mass. Historical Society.

An exception may be made of Middleborough, the home of the Rev. Isaac Backus, and of several towns on the border of our otherwise-minded sister, Rhode Island. They did not like a piece of the Constitution, but their principal target was Article III of the Declaration of Rights, which they felt unduly favored the Congregational churches—as indeed it did. Freetown, for instance, found "many articles that appear inconsistent to that Liberty that we think we have been so long contending for (viz.) the third article of the Declaration of Rights for one, the power invested in the Governour for the second, the power invested into the house of representatives for the third, and the manner of laying Excises or duties on manufactories." Freetown preferred to go on with the decapitated Province Charter "until this present Unhappy Contest is decided." Western towns where the Baptists were strong were of like mind. Westhampton objected to the Governor's military powers, "upon the Suposition that wee may at some time be so unhappy as to have a Governour who may not aime at the Good of the Commonwealth"; Shelburne objected to almost everything in these words:—"Why we dont Except of this Article is because we Dont (want) a Law of three Branches." That town was not alone in wanting a unicameral legislature immediately responsible to the will of the people. Many agricultural communities such as Greenwich and Washington objected to the Senate representing the mercantile interest, and were alarmed at the General Court's power to lay excise duties on produce. Worcester, in a very well worded and carefully thought out return, suggested that members of the House be guaranteed per diem salary and mileage. (This could be done under the Constitution, but was not actually done until 1811.) Several towns wanted the judiciary to be elected, or appointed for a term of years; and many demanded that every town be given a registry of deeds and a judge of probate. Boston and about twenty other towns thought that the right to a writ of habeas corpus was not strongly enough guaranteed. Chapter V section i, protecting the charter and privileges of Harvard College, naturally became a favorite target. Petersham, where the Harvard Forest is now located, thought that the Legislature should be free "to curtail that Rich and Growing Corporation lest it should Endanger the Liberties of the Commonwealth," and Bellingham proposed that the Harvard Treasurer be required by the Constitution to publish annually an account of the College funds and income. Bellingham little knew how embarrassing that would have been to the then Treasurer of Harvard, John Hancock, from whom the Corporation had been vainly endeavoring to obtain an accounting since 1775. Incidentally, the Harvard Treasurer nowadays does make public his annual report of how poor the University is; in fact, it was headline news on this very anniversary!

Amusing as some of these objections were, they were not typical. On the whole, the townspeople showed great acumen in pointing out the weaker features of the Constitution, and suggesting remedies.

Dorchester and Northampton made eloquent pleas for male suffrage. The Northampton return, drafted by Joseph Hawley, we would now regard as unanswerable. Every male aged sixteen and upward paid the poll tax, he observed; and in those days the poll tax accounted for about 40 per cent of the entire state revenue. Thus, to disfranchise men because they did not own real estate worth $10 a year, or other property worth $200, was taxation without representation. There was also a certain amount of opposition to the financial qualifications for office-holding; but not so much as one would suppose.[1] Petersham insisted that "Riches and Dignity neither make the head wiser nor the heart better. The overgrown Rich we think the most Dangerous to the Liberties of a Free State, and we object against a Discretionary power in the General Court to alter such Qualifications in Future." Groton pointed out that the power to raise the financial requirements might result in some towns having no qualified resident to elect. And Middleborough inquired, with some humor, what would happen if the people's choice for Governor turned out to be worth only £999 instead of £1000? Seeing that the Convention was elected by adult male suffrage, and that the Constitution was submitted to adult male suffrage, it is amazing that these property qualifications for the franchise and for office-holding did not wreck it.

Several towns adverted to the low quorum for doing business in the House; Leverett even anticipated Amendment XXXIII passed in 1891, that a majority of the members be required for a quorum. Newton was so forward-looking as to suggest the Referendum which was not adopted until 1918.

The most numerous objections were preferred to the two articles which anyone would now agree to have been the most defective:— Article III of the Declaration of Rights on the relations between Church and State, and the failure to include any method for amending the Constitution, except the call of a Constitutional Convention in 1795. Adams failed to include in his draft any method of amendment, not because he regarded it as perfect,[2] but because he thought that the amending power was covered by Article VII of the Declaration of Rights, ". . . the people alone have an incontestible . . . right to institute government; and to reform, alter, or totally change the same. . . ."[3] The Convention itself added Chapter VI article x, to the effect that a new Constitutional Convention could be called in 1795 if two thirds of those voting wanted it. Referring to this article, Roxbury observed that a convention should be made certain in 1795; others that the vote should be taken within five, seven or

[1]Douglass *Rebels and Democrats* p. 204*n* believes that there was an even split on this question, differing from my computation that it had over a two thirds majority.

[2]As Prof. Douglass says in *Rebels and Democrats* p. 208; but see John Adams *Works* IV 216 note 2.

[3]*Journal of the Convention* p. 194.

ten years; Bellingham thought there should be a constitutional convention regularly every decade. There was a larger minority against this article than against any other in the Constitution.

When the time came to vote on this proposition, in 1795, only a bare majority was in favor of a convention. But a convention had to be called in 1820 (relying on Article VII Declaration of Rights), owing to the separate statehood of Maine. It was the 1820 Convention which drafted Amendment IX, the regular system of amending the Constitution, which was accepted by the people in 1821 and which is still in force.

VIII. The Ratification

The Fourth, last and ratifying session of the Convention met on 7 June 1780 at the Brattle Street Church in Boston. At its previous session the Convention resolved that the towns could elect new delegates, if they chose, to attend this session; twenty-one towns availed themselves of this privilege and sent 24 new members. Braintree, for example, sent Brigadier General Palmer to replace John Adams.

By the time it met for this last session, the Convention was fairly desperate to get the Constitution ratified and a constitutional governmen elected. Out in Berkshire a county convention was considering asking the General Court "to set them off to a neighboring state that has a constitution"—e.g., Vermont.

So the Constitutional Convention, on the day it met, appointed a committee "to revise and arrange the returns." It was very difficult to get members to serve on this committee[1]—and no wonder, for the towns' returns were in such form that not even an I.B.M. machine could have coped with them. Hardly any two towns had followed the same system of expressing the views of their voters. Some, instead of voting for and against a specific article of the Constitution, drafted a substitute and voted on that; and as no two towns suggested the same substitute for a given article, it was impossible to determine just what two thirds of the people did want. On the Church and State article, for instance, many of the objections were on the ground that it was too liberal, allowing equal rights to Roman Catholics; while the others objected that it was not liberal enough and gave the General Court the power to compel church attendance and collect taxes to support the Congregational ministry.

After checking up on the committee's mathematics, I am of the opinion that they did considerable juggling of the returns on the Church and State article (Declaration of Rights Article III) and on the 1795 Convention article (Chapter VI, article x), to make it appear that two thirds of all those voting were in favor of the entire Constitution. But there was certanly a majority in favor of those two articles as they stood, and, in my ouinion, a two-thirds majority

[1]As finally constituted, it consisted of James Sullivan, chairman, and members from every county. It was added to from time to time and had a total membership of 15 or more.

in favor of all the rest. After all, many delegates were present from the dissident towns, and they had plenty of opportunity to check. They must have been persuaded that it was better to gloss over the two-thirds requirements for these two articles, in order to get the Constitution in force, since the process had already taken four years.

On 15 June 1780 the Committee reported to the Convention and the question was put on every article:—"Is it your opinion that the people have accepted of this article?" Which, upon every individual article, passed in the affirmative by "a very great majority." The Convention then declared "that the People of the State of Massachusetts Bay have accepted the Constitution as it stands in the printed form."[1] Next, it decided that the new Constitution would go into effect on 25 October following, and set the 4th of September for the election of Governor, Lieutenant Governor and Senators, and warned the towns to elect their representatives to the General Court by 15 October.

As it now appeared that the Convention's labors were drawing to a close, a committee was somewhat hastily appointed "to wait on the Rev. Dr. Cooper," (minister of the Brattle Street Church) "requesting him to close the Convention with thanksgiving and prayer." While waiting for the committee to wait on Dr. Cooper, the Convention passed votes of thanks to Governor Bowdoin, Secretary Barrett and the Brattle Street Church—but, not, strangely enough, to John Adams. The committee appointed to wait on Dr. Cooper presently reported that it was unable to locate the reverend gentleman at such short notice, "Whereupon it was moved, seconded and passed that the Rev. Peter Thatcher," delegate from Malden, "close the Convention with thanksgiving and prayer. Which service being performed, it was moved and seconded that the Convention be now dissolved. Which being put, passed in the affirmative."

The elections were duly held in September; there were no party tickets, but John Hancock and James Bowdoin were candidates for Governor, and the former won by a ten-to-one majority. So, on Wednesday, 25 October 1780, one hundred seventy-five years ago today, John Hancock was inaugurated the first Governor of the Commonwealth; and at the foot of His Excellency's first proclamation appeared for the first time the prayer in which we all may join:

"God Save the Commonwealth of Massachusetts."

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[1] *Journal of the Convention* p. 180.

ZONING, PLANNING, PLANS, ORDINANCES AND BY-LAWS

A Pandora's Box of Chaotic Land Law by Separate "Tribunals" in Three Hundred Cities and Towns and the Effect on the Marketability of Land Throughout the Commonwealth

1. THE GENERAL PICTURE

by

ARNOLD S. DANE *of the Boston Bar*

November 21, 1955

Editor, Massachusetts Law Quarterly

I have read with considerable sympathy, the letter entitled, "Zoning and Planning Boards, Another Problem" published in your issue of October, 1955, Volume 40, Page 55.

Unfortunately, the Planning Board and zoning laws are being used by the Towns and Cities to prevent growth and low cost housing and, therefore, the whole issue is always charged with considerable emotion. Thus, conveyancers, in general must realize that in passing titles, they are now treading an extremely dangerous path; that changes of law will be extremely difficult to secure from an unsympathetic General Court, most of the Judges in the Superior Court will instinctively favor the Town or City against the builder or owner on appeals; and the Supreme Judicial Court will generally decide in favor of the strongest interpretation in favor of the zoning and planning board laws, ordinances and by-laws. In fact, the excellent article by Mr. Rosenthal on Boards of Appeal, published in the same issue, (P. 45), indicates that trend in the Supreme Judicial Court, and, our highest Court is only in line with the country-wide path exemplified by several recent decisions by other State Courts which go so far as to uphold zoning for aesthetic factors (See Bullock v. City of Evanston (Ill.) 123 N.E. 2nd 840 and State v. Weiland (Wisc.) 69 N.W. 2nd 217).*

Be it noted that in the last two years our Supreme Court has decided that lots shown on plans recorded in the Registry of Deeds are wiped out by changes in zoning ordinances increasing the required area (Vetter v. Zoning Board of Appeal of Attleboro 330 Mass. 628) and that there is no law of laches in prevention of enforcement of zoning ordinances (Everett v. Capital Motor Transportation Co. 330 Mass. 417), both of which decisions were diametrically opposed to the usual thinking among building inspectors, town engineers, conveyancers, builders and real estate dealers. However logical these decisions, (and I must confess that their "legal" logic appeals to me personally) they are contrary to what has been the normal belief and practice among both Town officials and real estate dealers and completely against the common ideas of "justice" or

*See also Opinions of the Justices (as to Nantucket and Beacon Hill) 1955 A.S. 823, 833; 128 N.E. (2) 550, 563.

"fairness" and undoubtedly opened many "thousands" of properties to litigation—and I say "thousands" advisedly. In fact, they are daily being ignored by Town officials, developers, builders, and, worst of all by conveyancers. Your publication of the letter indeed opened a Pandora's Box which can be measured perhaps by the three titles, each of ten or more lots in three different Towns, which I promptly refused within a week after receiving your last issue. Till then, my personal practice had been to hopefully ignore the problem.

Your anonymous writer should hardly be surprised at the objections of local people to attempts to secure variances. It is normal for homeowners, be they old or new residents of the Town, be they old American stock, minority groups, or first, second, or third generation stock, to react the same in these situations. They all realize, perhaps instinctively, the real estate axiom that better houses and larger lots in the neighborhood and town improve the value of their own property and they all normally have an exaggerated idea of the cash value of their own property. For the best example of this, see an article, "They Said No To Progress," Page 30 of the Saturday Evening Post of August 8, 1953, involving the Town of Sharon and a local minority group in a "reform movement" led by a newcomer to the Town.

Since all these facts exist, a change in the law would be indicated, but is hardly likely.

The letter raised an old suggested change—that of requiring changes in zoning to be filed in the Registries of Deeds. This change would be mildly advantageous and is not by any means a new proposal since it was contained in his personal notebook, lent me by Charles E. Houghton, then in charge of the Land Court Office at Norfolk County back in 1934 and was an old proposal even then. However, Section 81X of the Planning Board Law provided pretty clearly for a separate book and indexes for the records of the planning board of each town. Yet, I have not found any Registry of Deeds where such books are maintained. Everything seems to go into the grantor index and the ordinary record book with perhaps an informal notebook kept in the Registry. Needless to say, the running of a Town or City in the grantor index ranges from a laborious to a colossal task, requiring hours or days.

Moreover, it is hardly feasible for lawyers with substantial practices to go to the Registry of Deeds to examine all these instruments. Also, changes can be made without notice that a conveyancer is likely to receive, while a transaction is pending (in fact, I am refusing a title where this occurred). I would favor a state-wide publication, perhaps, along the lines of the Federal Register for all Town by-laws, ordinances, rules, regulations, acceptances of Statutes, etc., but we have very little hope of this, since we do not even have a published consolidated index of special laws, another commonplace cause of grief. However, all the by-laws must go to the Attorney General for approval and my own suggestion would be for a statewide publication embodying all these matters.

Even this change will leave open the serious problem resulting from over 300 Towns and Cities with separately drawn by-laws, all of which require a good deal of study, most with unusual and "trick," even weird clauses, all of which are subject to interpretation by unsympathetic courts or, perhaps, more accurately, judges not familiar with the practical details affecting titles. I feel that "home rule" when it includes home legislation by 300 legislatures on complex questions is simply unsuitable to modern conditions and that our general acts on zoning and planning should be revised to limit the local Board and Town Meetings to legislation (call it rule-making if you wish) on a few simple matters. For example, the types of zones should be defined leaving to the local body the establishment of the zoning boundaries and the setting of standards of area, frontage and few other definite measurements.

In addition, I would suggest that the law provide that approval of a building permit by a local building inspector, Town engineers, or body, be conclusive as to compliance, except for use and with list of permitted uses attached, be recordable in the Registry of Deeds and Land Court office and further that granting of variances and hardship matters be taken away from local bodies entirely.

The letter further makes it evident that the lawyers of the Commonwealth have a deep interest in real estate law in a much broader sense than that of "conveyancing" or probate practice, not only zoning and planning, but building laws, health laws, permits, and many other fields of law affect the work of the lawyer attempting to advise on the sale or finance of real estate in the Commonwealth.

We need not only to try for favorable legislation in all these many fields, but to watch new legislation for creation of conveyancing problems, problems which will be ignored for years (as the 1947 and 1949 planning board acts were ignored) until catastrophe results. We need also to watch pending cases in the Supreme Judicial Court, and file briefs as Amicus Curae where the attorneys for the parties ignore practical results of the case, and attempt to avoid decisions such as the Vetter case by advising the Court of the practical results.

ARNOLD S. DANE.

THE PICTURE IN ONE OF THE MORE CAREFUL TOWNS — HARWICH

By HERBERT R. MORSE
Vice-Chairman, Harwich Board of Appeals

November 17, 1955

To the *Editor, Massachusetts Law Quarterly*

The October issue contained two valuable articles relating to zoning. Mr. James M. Rosenthal's review of the statutes and grouping of Supreme Court decisions on zoning should be very valuable to lawyers especially as the expansion in zoning law has led to much uncertainty as to just what law is applicable to any specific case.

The second article by an anonymous writer, indicates how problems can arise if planning boards are not careful in their approval of zoning plans. It suggests the need of additional legislation on zoning and planning. Perhaps more care in the administration of the existing laws would solve some of the difficulties. There is a surprising ignorance among zoning boards and even among lawyers as to just what the zoning laws of Massachusetts are. The Massachusetts Department of Commerce distributes some excellent publications setting forth the zoning statutes and the Department is always helpful in answering inquiries regarding these laws. Yokley's two volumes on Zoning Law brings the United States cases down into 1953 and the monthly bulletins of Eugene M. Quinlan of the Boston Bar bring the cases up to date.

The anonymous article makes the important suggestion, that the local laws of zoning and planning should be readily available and makes the broad statement, "Beyond contradiction in the smaller towns it is practically impossible to get any authentic information on this subject (of zoning and building laws) during the ordinary business hours." I expect that that criticism does not apply to a number of small Massachusetts towns. I know it doesn't apply to my own town of Harwich, on Cape Cod. This town prints and distributes its "Rules and Regulations governing Subdivision of land, Building and Fire Prevention Bylaw and the Zoning Protection Bylaw. This Protective Bylaw, effective 1951, with amendments through August, 1955, gives the zoning districts and the use regulations applying to these districts. A copy can always be obtained at the town offices during ordinary business hours. A copy is on file with the Register of Deeds for Barnstable County. If further information is required the names and telephone numbers of the Chairman and Clerk of the Planning Board and the Chairman and Vice Chairman of the Board of Appeals can be obtained from the Secretary of the Selectmen at the town offices. Conferences with these persons can be promptly arranged. There is on file with the Town Clerk a plan showing the zoning districts. This plan, prepared by the planning Board, has been duly approved by Attorney

General Fingold. The Selectmen keep Yorkley on Zoning Laws and an up-to-date file of Quinlan's Bulletins in their office and each member of the Board of Appeals has a copy each month of the Bulletins. Each of the seven postal districts of Harwich is represented on the Board by a regular and an associate member.

While our system in Harwich is doubtless not perfect it, at least, shows ways in which town zoning laws may be made available to inquirers.

HERBERT R. MORSE, *Vice Chairman*,
Harwich Board of Appeals

A PENDING BILL TO PRESERVE THE RECORDING SYSTEM

House Bill 954 (Referred to the Committee on Legal Affairs).

General Laws, Chapter 40-A, is hereby amended by adding at the end of Section 6, the following:—

After the adoption of a zoning ordinance, or by-law, or any amendments thereto, in a City or Town under the provisions of General Laws, Chapters 40 and 40-A, the City or Town Clerk shall cause to be filed forthwith with the Register of Deeds and with the Assistant Recorder of the Land Court where the land lies, a certified copy of such ordinance, or by-law, and any amendment, and the ordinance or by-law or amendment shall not become effective until such copy is so filed.

Copies of all zoning ordinances or by-laws in effect at the date of the passage of this Act shall also be filed by said City or Town Clerk with said Register and Assistant Recorder within ninety (90) days of the effective date of this Act, and if not so filed, the future operation thereof shall be suspended until so filed.

Each Register of Deeds and Assistant Recorder shall maintain an index of all such ordinances, by-laws, and amendments by the City or Town, which may be combined with the index required by law to be kept under the provisions of General Laws, Chapter 141, Sections 81-K to 81-GG.

Note

The recording system to protect landowners was established early in the 17th century.

PLANNING BOARDS AND SUB-DIVISION CONTROL AGAIN

by

JOHN A. MCCARTY *of the Boston Bar.*

More than two years have now passed since the new subdivision control law became effective[1] and, undoubtedly, many of the conveyancing problems encountered under the old law have been eliminated. However, the fundamental evil of arbitrary control of private property by a political board remains and, in the light of recent developments, seems to me to be more firmly entrenched than ever.

In December of 1952, the Special Commission on Planning and Zoning filed a report in which it listed five defects in the subdivision control law as it then existed. Of these five defects, Numbers 1, 2, and 5 dealt with conveyancing problems that are to some extent remedied in the present law[1]. The other two—and to me the most important—are as follows:

> "3. It is not made sufficiently clear that the application of the law is limited to regulating the design and construction of ways in subdivisions, and some well-mentioned but overzealous planning boards have attempted to use their power of approving or disapproving plans of proposed subdivisions to enforce conditions doubtless intended for the good of the public, but not relating to the design and construction of ways within subdivisions; and it it said that some town counsels have approved this usurpation of power.
>
> "4. There are provisions in the law which seem to authorize more arbitrary action by planning boards than is consistent with our ideal of a constitutional government."[2]

Shortly before the Commission submitted its report, the writer joined with Frank W. Grinnell, Esq. in a memorandum to the Commission wherein we stated:

> "We believe the landowner needs more protection against arbitrary, unconstitutional rules and administration than is provided either in the present law or in the Commission's revision . . . Planning Boards should not be made a super-local government as they are under the present law and under the proposed revision."[3]

The objections advanced by Mr. Grinnell and me were rejected principally because it was urged that the rights of landowners were sufficiently protected by the provisions of the new law, namely:

(a) Sec. 81Q, making it mandatory that planning boards adopt rules, instead of rules being merely permissive as under the old law.

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[1] G. L. C. 41, Secs. 81K to 81GG.

[2] Report of Special Commission on Planning and Zoning, December 1952. P. 10.

[3] Ibid. P. 61, 62.

(b) Sec. 81U, requiring that, if a plan is modified or disapproved, a planning board must state the reason for such modification or disapproval, and

(c) Sec. 81BB, providing for appeal to the Superior Court by anyone aggrieved by a decision of the board of appeals or of the planning board and specifically providing that the Court shall "hear all pertinent evidence and determine the facts, and upon the facts so determined shall annul such decision if found to exceed the authority of such board, or make such other decree as justice and equity may require."

We can see how little these provisions affect the power of planning boards if we consider the action of two boards in two widely separated towns. A builder entered into an agreement for the purchase of land for the purpose of subdivision. He immediately consulted the planning board of the town, and he and his engineer, together with the members of the planning board, worked out a subdivision plan which all agreed was ideal. However, at the public hearing required before approval of the plan by the board, more than a hundred inhabitants of the town appeared and opposed, *not the plan, but the development of the land for housing.* After the hearing the board voted unanimously to disapprove the plan. Within the next few days each individual member of the board apologized to the builder and gave as an excuse his inability to oppose the will of such a large number of fellow townspeople. Result—the landowner was prevented from making a profitable sale, and the builder lost $1,000. which he had deposited on the purchase and $1,000. in engineering expense. He was also liable in a suit by the owner of the land for failure to take title under the agreement, but the landowner, sympathetically, did not sue.

The other case illustrates equally arbitrary action by the planning board. A prospective builder acquired title to a tract of land which for eighteen years had been zoned in its present category. He presented a plan to the planning board for approval. The plan complied with the zoning ordinance and all of the rules of the board. Immediately on receipt of this plan, the planning board advertised a public hearing on a proposed change of zone for the tract in question, under the provisions of G.L. C. 40A, Sec. 6. When the public hearing on the approval of the plan was held by the planning board, several hundred townspeople objected—again, *not to the plan, but to the development of the land for housing purposes.* The board disapproved the plan, giving as its reason that, if the zone was changed at the annual town meeting in accordance with the recommendation of the board, the plan would not then comply with the zoning by-laws, as changed.

These two cases are taken at random and only for the purpose of illustration. Many similar examples could be cited, but the important question is, where is there anything in the law to prevent such action, or to give relief to a landowner whose rights are denied?

Section 81-O still provides that no one may make a subdivision of land without submitting a plan showing the proposed subdivision to the planning board, and Section 81-U gives the board power to approve, modify and approve, or disapprove, such plan. There is nothing in the law that limits or controls the absolute discretion of the board in exercising its powers. It is true that Section 81-M states the purpose which the law intends to accomplish, but this statement is only for the general guidance of boards and in no way controls their liberty of action.

The fact that planning boards must now adopt rules has no bearing on the exercise of discretion in approving or disapproving plans. A glance at Section 81-Q should convince anyone that the rules required are merely formal. In this conection, the statement of a protagonist of the new law, that "The change (i.e. making rules mandatory) has been made so that a prospective subdivider will know in advance in every case what will be required of him in the way of street construction and public utilities,"[1] is at least misleading.

Many have inferred that, if one complies with a planning board's rules, one has a right to have his plan approved. Such is not the fact, as the examples cited show.

But it is provided, in Section 81-U, that, "if a planning board modifies or disapproves such a plan, it shall state in its certificate and notice the reasons for its action." These words at first seemed to provide some hope. Would the court review the reasons given by a planning board for disapproval of a plan and, if so, would the court order approval of the plan, if the reasons for disapproval were insufficient? Lacking a court interpretation of the meaning of this provision, the question could not be definitely answered. However, the case of *Cefalo vs. Board of Appeals of Boston*, 1955 A.S., 39, shows that this requirement is of little or no help and indicates that a mere statement of statutory words is sufficient.

In that case there was an appeal from a decision of a Board of Appeals denying a variance from a zoning ordinance. The board was required to state its reasons for its decision and it did so by quoting the statute to the effect that the plaintiff "did not advance sufficient reason to cause the Board to come to the conclusion that this is a specific case where a literal enforcement of the act involved a substantial hardship upon the appellant, nor where desirable relief might be granted without substantially derogating from the intent and purpose of the act."

The plaintiff contended that the decision was invalid because it did not set forth the reasons for the decision, as required by law.[2] However, in overruling the contestants, the Supreme Court said, "In *Prusik v. Board of Appeal of Boston*, 262 Mass. 451, 457-8, this court said that the requirement that the board set forth its reasons

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[1] Report of Special Commission Planning and Zoning, December, 1952. P. 55.
[2] Now G. L. Ch. 40A, Sec. 18.

is not satisfied by a mere repetition of the statutory words, and that, while minute recitals may not be necessary, there must be a definite statement of rational causes and motives. Reference was made to the *Prusik* case in *Real Properties, Inc. v. Board of Appeal of Boston*, 319 Mass. 180, 183, and *Gaunt v. Board of Appeals of Methuen*, 327 Mass. 380, 381, 382. But in all three of these cases the board had acted affirmatively by granting a variance. It would have been easy to make an adequate statement of the reasons that led to that action. In the present case the board refused a variance. It would have been a matter of considerable difficulty, especially for laymen, to state in detail all possible factors the nonexistence of which resulted in the denial of the application. *In a case like this*[1] we are of opinion that the statement the board made of the statutory requirements for a variance that is found lacking was sufficient to comply with Sec. 19,[2] "as amended."

From this it seems that a sufficient statement under section 81-U of reasons for modifying or disapproving a plan would be a recital that the approval of the plan would not, in the opinion of the board, be consistent with the protection of the health, safety, convenience and welfare of the inhabitants of the city or town—or some other statement of statutory intent taken from Section 81-M.

It seems, therefore, that the requirement that planning boards adopt rules and that they must state their reasons for modifying or disapproving a plan affords no protection to a landowner in having his subdivision plan approved.

Then, is his right of appeal effective?

It must be borne in mind that there is no appeal to a Board of Appeal from a decision of a planning board disapproving a subdivision plan. The appeal is directly to the Superior Court, under Section 81-BB.

A careful study of the right of appeal provided throws considerable doubt upon its value. In the first place, the power of the court to annul the decision of the board is predicated on a finding by the court that the board's decision exceeded the authority of the board. The words of Section 81-BB are "shall annul such decision *if found to exceed the authority of the board.*"[1]

But what is the authority of the board? Search how you will in the statute, nothing can be found to limit the powers conferred by Section 81-U, vis., "after the hearing required in Section 81-T, the planning board *may*[1] approve, modify and approve, or disapprove such plan."

Now, if a hearing is held in accordance with the statutory provisions, and if all other formal requirements are met, and if the board thereafter disapproves the plan, how can a court find that the board has exceeded its authority? Has it not done exactly what it is supposed to do, viz., exercise its discretion as to whether or

[1] Emphasis supplied.

[2] Now G. L. Ch. 40A, Sec. 18.

not the plan should be approved? If this is so, how does the appeal to the court provided by Section 81-BB help a landowner who is trying to get a plan approved?

In addition to the power given the court to annul the decision of the board, if found to exceed its authority, Sec. 81-BB provides further: "The Court shall hear all pertinent evidence and determine the facts and upon the facts so determined shall . . . make such other decree as justice and equity may require."

The clear meaning of this language is that the Court shall hear the matter *de novo* and shall then substitute its opinion for that of the board by entering a decree which will be in effect the action of the planning board. If the court did this it would violate all precedents. There are numerous decisions in nearly all branches of the law which hold that a court will not substitute its discretion for that of a person or board or committee charged with the exercise of discretion.

However, although this objection was raised before the statute was amended, it was argued that the language used in the statute providing a right of appeal to the Superior Court under the subdivision control law is exactly the same as that used in the statute providing a similar appeal from a decision of a Board of Appeal under a zoning law,[2] and the court has entertained many appeals under the zoning law. That is true, but what was overlooked is this:

Zoning ordinances or by-laws divide a city or town into districts and specify what may or may not be done in the various districts. Under zoning the board of appeals has twofold powers. One is to act as an appeal board when the officer charged with the duty of issuing building permits refuses to do so on the ground that the permit if issued would authorize a violation of the zoning ordinance or by-law. In this capacity the board of appeals acts as a reviewing board to determine whether or not the officer properly interpreted the ordinance or by-law in refusing a permit. Undoubtedly, an appeal lies to the court from the board's decision when so functioning.

The other power of a Board of Appeals under a zoning ordinance or by-law is to hear and determine original petitions addressed to it for a special permit or a variance from the application of the zoning law. In this capacity the board exercises its discretion and may grant or refuse a permit or variance. Its decision in this capacity is not reviewable on appeal to the court, because the court will not substitute its discretion for that of the board. It cannot be too strongly emphasized that it is only in the second capacity that the board of appeals under zoning is analogous to the planning board, because every action of the planning board is based upon the exercise of its discretion, and no one has a legal right to have a plan approved any more than he has to have a variance from the zoning law.

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[1] Emphasis supplied.

[2] Now G. L. Ch. 40A, Sec. 21.

It is now no longer necessary to rely on unsupported reasoning, because the Superior Court has sustained this distinction in the case of *Prendergast vs. Board of Appeals of Barnstable*, 331 Mass. 555. This was a petition for a variance from the application of a zoning law which the board of appeals denied. The Court said, "Both parties and the judge at the hearing seem to have treated this statute as practically substituting the court for the board of appeals and giving the court the same power to grant variances that the board possesses. We do not think that is the meaning of the statute. The vesting in a court of authority to grant or order licenses, permits, or similar privileges of any kind is to say the least unusual. Especially would it be unusual to vest such authority where the granting or refusal of the license, permit, or privilege is in the nature of the exercise of administrative discretion and where the law gives no one a right to such license, permit, or privilege. It is the usual function of courts to secure and defend legal rights. The exercise by a court of licensing powers apart from questions of legal right would involve grave constitutional doubts. The statute should be so construed, if reasonably possible, so as to avoid such doubts."

In considering the specific words of the statute, the court continued, ". . . Next come the words which have been productive of misunderstanding, 'or make such other decree as justice and equity may require.' We do not construe these words as opening up to the court the whole area of administrative discretion, contrary to all precedent."

In a final summing up, the Court stated, "It is unnecessary to review the findings of the judge or the evidence in the present case. There is nothing in them to show that the board was under any legal compulsion to grant the variance. Whether a variance ought to be granted was an administrative question upon which reasonable persons might differ."

This language would be just as pertinent if an appeal were taken from the refusal of a planning board to approve a plan. Could not the Supreme Court, only slightly varying the language, say, "It is unnecessary to review the findings of the judge or the evidence in the case. There is nothing in them to show that the board was under any legal compulsion to approve the plan. Whether a plan ought to be approved was an administrative question upon which reasonable persons might differ."

Where then, is there any protection for the landowner from the arbitrary and even tyrannical acts of a planning board? Are we to depend entirely on the honesty and good intention of its members? It may be amusing but, to one who believes in a "government of law and not of men," there are serious implications in the statement quoted above from the report of the Special Commission on Planning and Zoning, namely that one of the defects of the old subdivision control law was that "some well-intentioned but overzealous planning boards have attempted to use the power of approving or dis-

approving plans of proposed subdivisions to impose conditions doubtless intended for the good of the public, but not related to the design and construction of ways within subdivisions."

Nothing in the new subdivision control law prevents boards from continuing to so abuse their powers. Why we should permit planning boards to have unlimited discretion in determining what is best for us, regardless of individual good intention, and why we subject ourselves to an abuse of this broad power without benefit of appeal, is something that would be hard to explain to the Founding Fathers.

Jefferson said, "In questions of power, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

Every American believed that a few years ago. Why not now? In academic discussion of government it is freely asserted that a benevolent oligarchy is undoubtedly the best form of government. But human nature being what it is, no oligarchy can remain benevolent. Power corrupts, and it is necessary to control power by a constitution and rigid laws.

What has happened that we are willing to submit our right of private ownership of real estate to a neo-feudalism which permits the state, acting through a board, to dictate its arbitrary will when we seek to subdivide our land? In places where the planning board is a benevolent oligarchy there may, perhaps, be transitory benefits but, as power tends to corrupt the oligarchy, we will realize that the price we paid for those temporary benefits was the loss of one of the rights of ownership of land.

Of course the local planning boards are political. Their members are either appointed by mayors in cities, or elected at the annual meeting in towns. For the most part they are made up of ordinary men with no special training or aptitude for the position. Why should it be assumed that they will control the development of our cities and towns better than the landowners themselves? The personnel of the boards is constantly changing, and the members individually are subject to pressure by selfish interests as well as by well-meaning citizens.

Even now the way is being prepared for greater and greater powers of planning boards. It is now claimed that the location of a house on a tract of land, the architecture, color, design of roof and many other things should be subject to the approval of the planning board! These things have not yet, to my knowledge, been publicly proposed in Massachusetts, but the nose of the camel is under the tent.

Is all this elaborate set-up of subdivisional control necessary? It was apparent that the Special Commission investigating the matter in 1952 intended to limit regulation of subdivision to ways within the subdivision. In fact, one of the evils of the old law recited

in the Commission's report was that it did not make sufficiently clear that the application of the law "is limited to regulating the design and construction of ways in subdivisions . . ."

If "the design and construction of ways in subdivisions" are all that are intended to be regulated, I submit that this can be accomplished without Planning Board interference. Under proper statutory authority, cities and towns could require that no permit for a building shall be issued unless the lot on which it is to be constructed fronts on a street or way, and that before a street or way, for use by two or more lots of land, is laid out, constructed or used as a way, a permit for such construction must be obtained from the proper municipal authority, in the same manner as a building permit is procured. It can be provided that no certificate of occupancy will be issued for any building on a lot depending for egress and access on a new street or way unless such permit was issued and the construction was completed in accordance with its requirements. Cities and towns can specify in detail what is required in the construction of streets and ways—the minimum and, if thought necessary, the maximum width; the maximum grade; the radius of curves, the type of surface and subsurface; the requirement for drainage, curbs, grass plots, etc., can all be set forth in ordinance or by law.

It would not be necessary that these requirements be uniform in all sections of cities and towns. The type of streets and ways and the construction thereof could be made to depend on the zoning regulations in the various sections. A Board of Appeal could be provided with the usual powers to hear appeals from any refusal to grant a permit and to grant relief from the strict application of the law in appropriate cases.

It is admitted that the adoption of a policy based on the above suggestions will not create a Utopia, but neither will the subdivision control law as it now exists. At least it would subject the owner of real estate to a "government of laws" instead of making it possible for "some well-intentioned but over-zealous planning boards" to use the "power of approving or disapproving plans of proposed subdivisions to enforce conditions, doubtless intended for the good of the public, but not relating to the design and construction of ways within subdivisions."

Another lawyer asks, "Does the sub-division control law authorize the planning boards to do other than provide for proper access to lots?" *Editor.*

"LAND IN CHAINS" UNDER THE ENGLISH "WELFARE STATE" AND ITS "AMATEUR TRIBUNALS"—THE NEW "FEUDALISM"

(From "The Passing of Parliament" by G. W. Keeton, Professor of English Law, University College, London—Reviewed 38, Mass. Law Quarterly, No. 2, June, 1953, p. 135.)

We respectfully recommend the reading of this book by every judge, lawyer and landowner in Massachusetts. Meanwhile, we call attention to the following passages from the chapter on "Land in Chains", indicating the new "Feudalism" toward which Massachusetts seems headed unless we "stop, look and listen."

F. W. G.

Passages from "Land in Chains"

"No claim for originality can be made for the title of this chapter, for it was used by more than one legal writer in the nineteenth century, when advocating reform of the land law." . . .

"The Town and Country Planning Act of 1947 gives powers of planning and control on a scale not hitherto contemplated. Moreover, in view of the importance of agriculture in the national economy, the Agriculture Act, 1947, and the Agricultural Holdings Act, 1948, have revolutionised the position of the entire farming community. Because public dissatisfaction with the Town and Country Planning Act has grown rapidly in intensity, the equally far-reaching provisions of the Agriculture Act and the Agricultural Holdings Act have not been so generally appreciated. Nevertheless, they cut right across the traditional development of agriculture in this country, and as the extent of the powers conferred upon the Ministry of Agriculture are more widely appreciated there can be little doubt that criticisms of this Act, and dissatisfaction with the regime it creates will increase sharply. These two Acts, and the Town and Country Planning Act, 1947, leave little more to the owner of land than the empty shell of bare title." . . .

"The county committees, of which there are over 60, each with its staff of technicians, and office staffs, include within their province the task of telling farmers what crops are to be grown, the hiring out of machinery and casual labour, looking after the various subsidy schemes, and the allocation of feeding stuffs. Possibly their most important function of all, however, is the holding of enquiries at the direction of the Ministry to establish cases of bad management, leading to a supervision order or a dispossession order. Such enquiries are classic examples of administrative tribunals at their worst. They are staffed by neighbouring farmers, who therefore are necessarily interested parties. In addition, their terms of reference are ambiguous to the points of incomprehensibility. Thus Section 11 (1) of the Act states:

" 'For the purposes of this Act, the occupier of an agricultural unit (!) shall be deemed to fulfil his responsibilities to farm it in accordance with the rules of good husbandry in so far as the extent to which and the manner in which the unit is being farmed (as respects both the kind of operations carried out and the way in which they are carried out) is such that, having regard to the character and situation of the unit, the standard of management thereof by the owner and other relevant circumstances, the occupier is maintaining a reasonable standard of efficient production, as respects both the kind of produce and the quality thereof, while keeping the unit in a condition to enable such a standard to be maintained in the future.'

"It will be seen that this clause, when translated into English, has the effect of putting a farmer into the hands of his neighbors, with whom he may be on the worst of terms. These very wide and ill-defined powers are being freely used. Down to the middle of 1951, no less than 2,750 farmers had come under the supervision of the county committees, and 130 had been dispossessed. Thus, 130 farmers had been deprived of land and livelihood by amateur tribunals from whom there is no possibility of appeal to the courts.

"Inasmuch as freedom of contract has virtually disappeared, and as a farmer can now be evicted at the instance of the Ministry for failure to farm 'efficiently', or in accordance with the plan, it is plain that, after a brief absence of a quarter of a century from our land law, feudalism has now returned in a new and ominous form."

"If the two Acts mentioned above have placed agricultural land again in fetters, the Town and Country planning Act has done even more for land capable of non-agricultural development. Indeed, it represents a very formidable obstacle to the development of land at the present time."

"As far as this aspect of planning is concerned, therefore, the issue is not one of planning or non-planning, but of the reasonableness or unreasonableness of the planning which is being undertaken. It was said of Guy Fawkes, when arrested after the discovery of the Gunpowder Plot, that he was interrogated before being racked, during racking, and after racking. The plight of the unfortunate who wishes to undertake the development of land today is little better. He is interrogated before planning, during planning, and after planning. Indeed, Great Britain today illustrates in acute measure the misfortunes of a country *which has surrendered unconditionally to the planners.** Very soon, it will be impossible to place a dustbin in the backyard without planning permission. It

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*At this point, it may be well to ponder Admiral Morison's quotation (in this issue, p. 1) from Lowell's "Bigelow Papers" in which "Hosea Biglow taunted the ghost of his Cromwellian ancestor

'You took to follerin' where the Prophets beckoned,
An fust you knowed on, back come Charles the Second'."

F. W. G.

The italics in the text are ours.

has already been held that planning permission is necessary before a board can be exhibited announcing a sale of property. A house-owner has been directed to paint the tiles of his house another colour to conform with a local 'plan'. To place a heap of stones on land is a change of use, which requires planning permission. It is worth while remembering that today, local authorities, in pursuance of obligations laid upon them by the Ministry, are preparing 'over-all' (blessed word) plans of their areas, and in so doing, are not unnaturally viewing their responsibilities in the widest terms. In one plan with which I am acquainted, it is suggested that the gas-works should be transferred to the other side of the city! No doubt there are good reasons for such a suggestion. There may also be good reasons for moving the city bodily to some healthier neighbourhood. It is, as was suggested above, entirely a question of reasonableness, and reasonableness in planning is a question of degree."

"Unfortunately, such an idealistic view of the future as is involved in this 'over-all' plan has a deterrent effect on industry today."

"When the Act was under discussion, there was little public appreciation of what was involved. It is only since the impact of this imposition upon members of all classes has been experienced that public opinion has shown a resentment, which is rising daily."

"It was not contemplated, for example, that a cobbler who erected a small lean-to-shed behind his house to carry on his trade more efficiently would have to pay £400 development charge. Nor was it appreciated that the conversion of two flats back to the single house from which they had been made by the removal of inner partitions was a change of use attracting development charge. As the Act stands at present, much property in this country is probably sterilised to its present use for an indefinite period. Where it is not, the existence of the tax is a substantial measure of inflation."

INTEREST IN LAND DAMAGE CASES

by

GEORGE K. BLACK

Section 37 of our statute on eminent domain (G.L. c. 79, sec. 37) provides that "Damages under this chapter shall bear interest at the rate of four per cent per annum from the date as of which they are assessed until paid . . ."

Although the eminent domain statute provides that damages shall bear interest at four per cent *until paid,* the Supreme Judicial Court in 1953 ruled that a judgment against the Commonwealth did not bear such interest *until paid. (General Electric Company v. Commonwealth,* 329 Mass. 661.) Execution does not issue on a judgment against the Commonwealth. Procedure for payment is governed by G.L. c. 258, sec. 3. Under the statute in effect at that

time, the Chief Justice of the Superior Court certified the "amount found due, *with legal costs*" to the comptroller, and thereafter the governor drew his warrant "for such amount" on the state treasurer. This justified a warrant only for the finding and costs. The specific mention of costs in the statute by implication excluded interest on the judgment.

Moreover, the practice of including interest in the damages found by the jury made any other rule impossible of application. Without separating damages from interest, the rule asked by the petitioner in that case would result in compound interest.

Since that time section 3 of chapter 278 has been rewritten and the words "with legal costs" have been omitted. It is suggested that the reasoning of that case no longer applies. It is submitted that costs are covered in G.L. c. 79, sec. 38, and that the omission of costs in the new section 3 of chapter 278 doesn't eliminate costs which are specifically provided in the eminent domain statute. Their inclusion in section 3 was ruled to be restrictive of interest. That restriction has since been removed.

Pursuant to section 37 of the eminent domain statute (G.L. c. 79, s. 37, supra), the trial judge in an eminent domain case instructs the jury in the method of computing damages, and then instructs them to compute interest thereon from the date of the taking to the date of their finding, and to bring in a verdict for the single total sum. The verdict is for a single sum. There is no separation of damages and interest, and it is impossible to determine what was the damages found by the jury, or to verify their computation of interest. In theory, having the verdict, the rate of interest, and the period, the damages can be figured mathematically. But such arithmetic is pure speculation, and in most cases has no relation to reality.

Except by statute, there is no interest in eminent domain damages. (*Norcross v. Cambridge*, 166 Mass. 508). Our Legislature by section 37 has provided for interest at four per cent per annum on damages from the date of the taking until paid. The wisdom of that decision needs no justification where the judgment may be from one to three years, and longer in some cases, after the seizure. The rate is set by statute. It does not present an issue of fact to be decided by a jury. Rather it calls for the application of arithmetic by the court or its clerk to the damages found by the jury.

Here in Massachusetts the Superior Court does not interrogate juries as is the practice in some other states, to convert general into special verdicts. What is happening is that the juries are considering damages, adding interest, and then increasing or decreasing the amount so found.

It is submitted that the jury should confine its deliberations to damages and that the clerk of court should compute interest thereon from the date of the taking to the date of the judgment in a fashion similar to the procedure in tort actions where interest is computed by the clerk from the date of the writ. (G.L. c. 231, s. 6B).

It may be argued that the date of taking may be an issue of fact. Such cases are so rare that they present an infinitesimal problem. They could be handled by a special verdict on that issue wherein the jury finds as a fact the date of the seizure.

The following amendment is presented for consideration by the Bar:

> Section 37 of chapter 79 of the General Laws is amended by inserting after the semi-colon after the word "provided" the following:
>
> "in any jury case interest shall be computed by the court and added to the verdict;"

A petition and bill for such an amendment is before the Legislature. (Senate Bill No. 235, referred to Committee on the Judiciary.)

This proposed separation of damages and interest, should also overcome the problem of interest after judgment. The certificate of judgment of the clerk of the Superior Court can set forth the amount of the finding, and the fact that interest at four per cent is due thereon until paid.

If you favor this proposed amendment, it is suggested that you voice your opinion to your Senator and Representative.

DOWER AND CURTESY

The following pending bill* (Senate 274) has been introduced by Frederic B. Dailey of the Boston bar to restrict dower and curtesy claims to lands owned at the death of the claimant's spouse.

Section 1. Chapter 189 of the General Laws is hereby amended by striking out Section 1 and inserting in place thereof the following section:—Section 1. A husband shall, upon the death of his wife, hold for his life one third of all land owned by her at the time of her death. Such estate shall be known as his tenancy by curtesy, and the law relative to dower shall be applicable to curtesy. A wife shall, upon the death of her husband, hold her dower at common law in land owned by him at the time of his death. Such estate shall be known as her tenancy by dower. Any encumbrance on land at the time of the owner's death shall have precedence over curtesy or dower. To be entitled to such curtesy or dower the surviving husband or wife shall file his or her election and claim therefor in the registry of probate within six months after the date of the approval of the bond of the executor or administrator of the deceased, and shall thereupon hold instead of the interest in real property given in section one of chapter one hundred and ninety, curtesy or dower, respectively, otherwise such estate shall be held to be waived. Such curtesy and dower may be assigned by the probate court in the same manner as dower is now assigned, and the tenant by curtesy or

*Referred to the Committee on Legal Affairs.

dower shall be entitled to the possession and profits of one undivided third of the real estate of the deceased from her or his death until the assignment of curtesy or dower and to all remedies therefor which the heirs of the deceased have in the residue of the estate. Except as preserved herein, dower and curtesy are abolished.

Section 2. If it should be held that this act cannot constitutionally apply to existing rights of dower or curtesy, it shall nevertheless be fully effective except as to such existing rights.

THE LEGAL NATURE OF INCHOATE DOWER

The second section of Mr. Dailey's bill raises an interesting constitutional question.

The reason for the section is a doubt expressed but not decided or discussed in *Hanscom v. Malden*, etc. Co. 220 Mass. 1 at p. 7, as follows:

> "Although it has been held in some jurisdictions to be within the power of the Legislature to extinguish a wife's right of dower before it has become consummate, yet, whether such decisions are consistent with the law of this Commonwealth by which an inchoate right of dower is recognized as a property right, is open to grave doubt. *Dunn v. Sargent*, 101 Mass. 336, 340."

The matter was not discussed or decided in *Dunn v. Sargent* either. We respectfully question the doubt thus expressed for the following reasons.

Dower was a common law incident of the marriage status. Inchoatic Dower (while both spouses are living) is a subsidiary incomplete incident of that status. It is not created by anyone as a vested right, even the status itself, can be modified by legislation as it has been in various ways (See G. L. Chapter 208). We are not aware that these changes have been held out not to apply to existing marriages. By Chapter 76 of 1949 the Legislature amended Chapter 208 by providing that after a divorce a husband or wife shall not be entitled to curtesy or dower in the land of the other spouse.

In the recent case of *DeMarzo v. Vena*, 330 Mass. 118 at p. 123, the court said:

> "We believe that although, after a decree under sections 32 or 36, the parties still remain husband and wife, the incidents which constitute the marriage are so changed that the relationship which remains is substantially different from that ordinarily indicated by the term marriage. The husband's duty to support the wife is either terminated altogether or limited by the terms of such decree. It was recently said in *Wiley v. Wiley*, 328 Mass. 348, at page 349, a case arising out of section 32, *'But the scope of the statute and the prayers of the petition go beyond the matter of a decree in personam for money payments. They comprehend a modification of the incidents of the status of marriage.'* See Brow v. Brightman, 136 Mass. 187; Baldwin v. Foster, 138 Mass. 449; Malden Hospital

v. Murdock, 218 Mass. 73; Welker v. Welker, 325 Mass. 738. *We are of opinion that a decree under either section 32 or 36 is in effect a judgment in rem which is binding upon all the world.*"

Of course, on the death of the husband, dower, as far as it exists, becomes a vested right which the Legislature cannot change (if claimed within 6 months or whatever time the statute may provide); but inchoate dower before the death of the husband would seem not to be vested any more than the marriage status which gives rise to it is vested with all its common law details.

We respectfully suggest that the limitation of dower proposed by Mr. Dailey's bill can, and should, apply to inchoate dower in existing marriages. However, in view of the doubt quoted above from the opinion of the court the Legislature may think it advisable to ask for an advisory opinion of the justices so that it will not cloud titles for the indefinite period of the lives of existing married couples. For states in which dower is abolished, see below. F. W. G.

STATES IN WHICH DOWER IS ABOLISHED OR LIMITED

(From Martindale-Hubbell "Law Digests")

Arizona—Abolished
Arkansas—Barred if husband's deed on record seven years
California—Abolished
Colorado—Abolished
Connecticut—No dower in marriage after April 20, 1877
Idaho—Abolished
Indiana—Abolished
Iowa—Abolished
Louisiana—Abolished since May 1, 1895
Mississippi—Abolished
Nebraska—Abolished
Nevada—Abolished
New Mexico—Abolished
New York—Exists if marriage before September 1, 1930; otherwise not
North Dakota—Abolished
Oklahoma—Abolished
Puerto Rico—Abolished
South Dakota—Abolished
Texas—Abolished
Washington—Abolished
Wyoming—Abolished
Alberta—Abolished
British Columbia—Abolished
Newfoundand—Abolished
Australia—Abolished

SIGNIFICANT MASSACHUSETTS DECISIONS DURING THE FIRST HALF OF 1954-1955

A Discussion at the Lawyers' Institute at Swampscott, June 24, 1955.

by

ALAN J. DIMOND

A presentation such as this should do two things. First, it should depict the ever-changing life of the law, describing the arrival of new rules, the development of others and the departure of those that have become lifeless or obsolete. Second, it should state current cases calling to mind the existence of important rules of law which the press of other business has often allowed to slumber unnoticed on our shelves. In each respect it may perhaps be of value to a busy bar.

DECEIT

The case of *Yorke v. Taylor*, 1955 A.S. 257, is a significant development in the Massachusetts law of deceit. It holds that even though a plaintiff might have ascertained the falsity of a misrepresentation had he made an investigation, his reliance on its truth is nevertheless justifiable and will not bar a suit for rescission. The case involved the purchase and sale of real estate. The defendant, the seller, had innocently told the plaintiff, the buyer, that the assessment was $12,500. In fact, because of recent improvements it had been increased to $26,000 and the assessors' records so indicated. The plaintiff, however, did not examine these records and did not learn of the $26,000 assessment until after papers had been passed. He then brought this suit to rescind the transaction. The Court granted the requested relief, and in so doing, swept aside a line of Massachusetts cases containing statements such as "The law will not relieve those who suffer damages by reason of their own negligence or folly."[1]

The scope of *Yorke v. Taylor* must be gauged by viewing it against the background of the strict Massachusetts rule that makes actionable a false though innocent representation of a material fact susceptible of knowledge when made as of a party's own knowledge and stated as a fact and not as a matter of opinion.[2] When the plaintiff seeks only rescission, the defendant's innocence in making the misrepresentation, as in *Yorke v. Taylor*, should not bar recovery since rescission merely prevents unjust enrichment. But should the defendant's innocence affect the result where the plaintiff is seeking damages? That question is left open by *Yorke v. Taylor*.

In support of an affirmative answer to the question, it could be argued that where the plaintiff seeks damages, his contributory negligence in carelessly relying on a misrepresentation of fact should

[1] *Silver v. Frazier*, 3 Allen, 382, 384.

[2] *Yorke v. Taylor*, at page 259 and cases cited.

be a bar to recovery if the defendant's misrepresentation is not intentional but only negligent, or perhaps not even that, since contributory negligence is a bar to recovery in most other types of non-intentional torts. If, on the other hand, the misrepresentation is intentional, the plaintiff's contributory negligence should not bar a claim for damages since contributory negligence is not a bar to claims for damages for other intentional torts.

CONTRACTS

Collins v. Keefe, 1955 A.S. 263, presents the interesting question of the availability of the remedy of rescission or specific restitution for breach of contract after the plaintiff has completed his own performance by transferring property to the defendant.

The case was a familiar one. An elderly couple, the owners of a duplex house, conveyed it to the defendants, reserving life estates in one apartment, upon the defendants' promise to furnish nursing support to the plaintiffs during the balance of their joint lives. It appeared that nursing services were required but were not furnished. There was no claim of fraud or undue influence. This proceeding was then brought to rescind the conveyance and the requested relief was granted.

This case is included in this discussion because it furnishes one of the few exceptions to the general rule, which it may be well to recall, that after property has passed from the plaintiff under an agreement which still remains executory on the part of the defendant, the plaintiff, if other compensatory relief is available, is ordinarily not entitled to rescind even though the defendant may commit a substantial or total breach.[3] The only relief usually afforded is damages or specific performance. In the nursing care cases, however damages are not ascertainable and specific performance will not be granted since personal services are involved. Hence, the only practical remedy is rescission by way of specific restitution.

ADMINISTRATIVE LAW

The important case of *Pendergast v. Board of Appeals of Barnstable*, 1954 A.S. 633, 331 Mass. 555, had several successors in 1955.[4] *Pendergast* had held that the provisions of the Zoning Enabling Act vesting jurisdiction in the Superior Court to review decisions of local boards of appeals and to enter such decree "as justice and equity may require"[5] does not mean that the Superior Court can order the granting of a variance which a local board of appeals in its discre-

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[3]Williston, Contracts, (Rev. Ed.) sec. 1456. Restatement of Contracts, sec. 354. For sales of personal property see G. L. (Ter. Ed.) c. 106, sec. 54.

[4]*Cefalo v. Board of Appeals of Boston*, 1955 A.S. 39,
Sheehan v. Board of Appeals of Saugus, 1955 A.S. 43,
Devine v. Board of Appeals of Lynn, 1955 A.S. 209,
Rettig v. Planning Board of Rowley, 1955 A.S. 381,
Burnham v. Board of Appeals of Gloucester, 1955 A.S. 881.

[5]G. L. (Ter. Ed.) c. 40, sec. 30, as amended.

tion had denied, at least where no abuse of discretion appeared. To interpret the statute as conferring that jurisdiction would raise constitutional questions about judicial intrusion into executive functions. Statutes, however, are to be construed, if reasonably possible, so as to avoid such issues.

Although the *Pendergast* case has been thoughtfully commented on elsewhere,[6] several observations here may be appropriate. The Court's conclusion that the statute, as properly interpreted, conferred a very limited jurisdiction on the Superior Court was derived from an argument that may be stated in its broadest terms as follows: Courts are established only to adjudicate legal rights; no one has a legal right to a variance; therefore, a Court has no jurisdiction to pass on the denial of an application for a variance. Hence, it may be concluded that the Legislature did not, merely by the use of general language about "justice and equity", intend to confer on the Superior Court a jurisdiction that it could not lawfully exercise.

The second step in the argument—that no one has a legal right to a variance—presents several difficulties. If we talk in terms of legal rights, we might also say with equal validity that an applicant for a variance has a legal right to have his application considered in the exercise of a lawful discretion. Or we might also say that every landowner has a legal right to improve his land as he sees fit unless prevented by some positive rule of law.[7] Talking only in terms of the lack of legal rights to a variance, therefore, does not, it seems, unlock many doors.

The United States Supreme Court wrestled with a like problem between 1912 and 1939 as one aspect of what was known as the "negative order doctrine"[8]. During this period there was at least one Supreme Court opinion that spoke of legal rights to administrative relief as the touchstone of the reviewability of administrative action.[9] Finally, however, in *Rochester Telephone Corp. v. United States*, 307 U.S. 125, the Supreme Court swept away the "negative order doctrine" and substituted the more workable doctrines of "primary jurisdiction" and "administrative finality". It is the latter doctrine which concerns us here.

"Administrative finality" refers to the scope of judicial review of administrative action. It points up the general proposition that judicial review of administrative action is narrow in scope, that findings of fact, if supported by substantial evidence, will be final and that on review "Only questions affecting constitutional power, statutory authority and the basic prerequisites of proof can be raised."[10]

In applying the doctrine of administrative finality it is unnecessary to distinguish between affirmative and negative orders. Judicial

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[6]1954 Annual Survey of Massachusetts Law, secs. 2.10, 14.25, and 20.2. Rosenthal, Procedure in Appeals etc., 50 Mass. L. Q. (3) 45, 49 et seq. (Oct. 1955).

[7]*Felsway Realty Corporation v. Building Commissioner of Medford*, 1955 A.S. 371.

[8]Davis, Administrative Law, sec. 241.

[9]*Piedmont & Northern Ry. Co. v. United States*, 280 U.S. 469, 475.

[10]*Rochester Telephone Corp. v. U. S.* at 140.

relief in each case is the same. If an administrative agency acted under erroneous legal principles, the Court will order it to act in accordance with correct ones within the framework of the agency's discretionary authority. In the exercise of its discretion, the agency might be given greater latitude in refusing to change an existing situation than it may have in permitting a change. "But this bears on the disposition of a case and should not control jurisdiction."[11]

It may be suggested that the *Pendergast* case does not present a situation involving the doctrine of administrative finality since, in the language of the Court in that case, "This is not one of the familiar instances where the Court is required to accept to a greater or less extent the findings of the administrative tribunal."[12] Rather the Court must hear the case de novo and make its own independent findings.[13]

But having done that, the Court then inspects the decision of the board of appeals to determine its legal validity. In making its determination, the Court actually applies the doctrine of administrative finality by according the board of appeals a wide area of unchallengeable administrative discretion and, in effect, *does* accept "to a greater or less extent the findings of the administrative tribunal." This may not be "one of the familiar instances" where such findings are accepted but it certainly is an instance, *unfamiliar* though it may be.

The attitude of judicial self-denial manifested in the *Pendergast* case is also reflected in other decisions. *Ames v. Attorney General*, 1955 A.S. 111, involved a challenge to the validity of a proposed transfer of certain collections of books and dried specimens from the site of Harvard's Arnold Arboretum endowment in West Roxbury to the botany department of the University in Cambridge. The case arose on a demurrer to a petition brought by members of the public at large seeking the issuance of a writ of mandamus to the Attorney General ordering him to reconsider according to correct principles of law his denial of an application previously made by the petitioners to him that they be given leave to bring an information in his name, as the supervisor of public charities, to obtain a declaratory decree as to the validity of the proposed transfer. The Court sustained the demurrer and dismissed the petition saying that the requested relief "would constitute an intolerable interference by the judiciary in the executive department of the government and would be in violation of art. 30 of the Declaration of Rights."

Again, in *Despatchers Cafe, Inc. v. Somerville Housing Authority*, 1955 A.S. 127, which came up on a demurrer, the Court ruled that where no charges of dishonesty or malice are made, the motives of public officials cannot be inquired into when they are acting for a lawful purpose. The question sought to be raised was whether a

[11]Id. at 142.
[12]331 Mass. 555 at 558.
[13]This is clearly brought out in *Devine v. Board of Appeals of Lynn*, 1955 A.S. 209.

taking by eminent domain for slum clearance purposes was not rather actually motivated by a desire to increase the value of taxable real estate in Somerville. Such a motive, the Court ruled, was not a proper subject of judicial inquiry.

Evidence

In *McElwain v. Capotosto*, 1954 A.S. 865, an action of tort for personal injuries, the Court held that the trial judge acted within the bounds of permissible discretion in allowing the defendant, on cross-examination of the plaintiff, to show that despite the plaintiff's absence from work during the period of his alleged disability, his pay nevertheless continued. Now it is settled that continuance of pay does not reduce the damages for impairment of earning capacity.[14] *McElwain v. Capotosto* does not change that rule but it does admit the evidence of continuance of pay on the issue whether the plaintiff's earning capacity was in fact impaired. The plaintiff, it is said, might have needlessly stayed out of work since he was going to get paid anyway.

It was shown in *McElwain v. Capotosto* that the continuance of pay was a matter of the plaintiff's right and not of his employer's discretion. In the latter case, if the employer saw fit to continue the pay, it could not, it seems, be said that the pay induced the plaintiff to prolong his absence from work unless further evidence were adduced to show that the plaintiff could reasonably assume that the employer would exercise his discretion in the plaintiff's favor. But this might open up too many collateral issues.

Pleading

Gibbs v. Lido of Worcester, Inc., 1955 A.S. 323, involves an important point of pleading of which it may be well to be reminded. The case holds that in an action against a principal on a written instrument signed by his agent, the agent's authority cannot be put in issue by a mere denial. There must be compliance with G. L. c. 231, s. 29, which says that the genuineness of written instruments declared on as a cause of action shall be deemed admitted unless the defendant seasonably files a special denial of the genuineness thereof and a demand for proof. Genuineness, the Court reminds us, includes not only the actual signing but also the authority of the signer.

Jury Trials In Equity Cases

The right to a jury trial in equity was involved in *McAdams v. Milk*, 1955 A.S. 253, where the Court reminds us that a plaintiff's resort to an equitable remedy, such as a bill to reach and apply, to enforce a legal cause of action is a waiver of an absolute right to trial by jury on the primary claim. A defendant, however, cannot

[14] *Shea v. Rettie*, 287 Mass. 454.

be deprived of a jury trial on the primary legal claim merely because the plaintiff resorted to an equitable remedy to enforce it.

Foreign Custody Decrees

Aufiero v. Aufiero, 1955 A.S. 9, illustrates the decreasing importance of the Full Faith and Credit Clause in cases involving foreign custody decrees. In this case a Nevada court divorced the parents of a minor daughter under circumstances entitling the divorce decree to full faith and credit under the *Coe* and *Sherer* cases.[15] Custody of the daughter was awarded to the father's parents with whom the father made his home in New York City. The mother had previously left her husband in New York and had moved to Massachusetts where she made her home with her parents in Quincy.

As the result of later custody proceedings brought by the mother in New York, and ultimately dismissed, the mother took the child to Quincy for a permitted three-week visit. When the three weeks were up she refused to return the child to New York. Cross-petitions were then brought here to settle the custody of the child.

There were two principal issues before the Court: 1. Whether the Massachusetts Court had jurisdiction to consider the mother's custody petition since it was bottomed on the residence of the child in Massachusetts;[16] 2. What effect was to be given to the Nevada custody decree?

On the first point the Court ruled that despite the mother's misconduct in not returning the child to New York, the child had a residence in Massachusetts since "She was actually living at the home of her mother in a relationship which those in actual control of her intended to make permanent if they could."

On the effect to be given to the Nevada custody decree, the Court, as the United States Supreme Court has said it may do,[17] considered changed circumstances without however, first, as in *Heard v. Heard*, 323 Mass. 357, making a determination of the extent to which the decree was final in Nevada itself.[18] Finding that the father had remarried, that he had left his parents' home, that the child was now living happily with her mother in a fresh modest home in Quincy and that her New York home would be in a cliff-like apartment house, the Court awarded custody to the mother.

Inspection of Corporate Records

Prior to 1923 a stockholder in a Massachusetts corporation had an absolute right under G. L. c. 155, s. 22 to inspect the corporation's stock and transfer books.[19] By St. 1923, c. 172, the corporation was

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[15]334 U.S. 378 and 334 U.S. 343.

[16]Under G. L. (Ter. Ed.) c. 208, s. 29.

[17]*Halvey v. Halvey*, 330 U.S. 610.

[18]In the *Heard* case the Court at page 374 stated that under the law of Nevada, as in most jurisdictions, a custody decree may be modified for good cause.

[19]*Shea v. Parker*, 234 Mass. 592. Compare, however, the rule governing the inspection of other corporate records. *Varney v. Baker*, 194 Mass. 239. *Albee v. Lamson & Hubbard Corp.* 320 Mass. 421.

permitted to set up a stockholder's improper purpose as a defense to an application for inspection of these books. *Hanrahan v. Puget Sound Power & Light Co.*, 1955 A.S. 517, is the first case to apply the amendment and holds that a mere demand by a stockholder is prima facie sufficient to require exhibition of the stock and transfer books. The corporation can inquire into the stockholder's purpose only after he invokes judicial aid to enforce his application.

This does not mean that a stockholder should not give reasons when he applies. By doing so he may avoid unnecessary litigation. In the *Hanrahan* case, which involved a possible merger battle, the stockholder's purpose was to obtain names of other stockholders for solicitation of proxies on behalf of a pro-private-merger committee of whose members only one-fourth were stockholders, the other members being in the investment banking or securities business. The Court held that the corporation had failed to show that, on these facts alone, such a purpose was improper.

The *Hanrahan* case is also significant because it further holds that the plaintiff's demand on the clerk of the corporation (its by-laws providing that the clerk should perform "all the duties commonly incident to his office") was a sufficient demand under G. L. (Ter. Ed.) c. 155, sec. 22 on the "officer or agent . . . having charge" of the requested books, even though a transfer agent had actual physical possession of them.

Conclusion

Despite the many appellate cases each year involving no new or significant rule of law, a substantial number of our Supreme Judicial Court's decisions continue to advance the law and to call to mind some of its important overlooked provisions. It is hoped that the above discussion has adequately stated some of these decisions for the first half of 1954-1955.

INTERESTING PARALLELS

1. In the Armed Forces

In a little book with the Sub-Title of "An Essay in Straight Thinking" written early in the Second World War and published after the War by Air Chief Marshal Sir Hugh Dowding to whom, not only the English people, but all of us in the Western World, are indebted for the great part he played in the Battle of Britain, there is a chapter entitled "Why are Senior Officers so Stupid?", containing the following passages:

> "I have often wondered why some senior officers in the services show all the symptoms of mental paralysis after the age of forty-five or so. It is not because the level of intelligence of candidates

for commissions is markedly below the average of educated members of the community. On the contrary, the severe competition for entrance to some branches of the Service, secures some of the best brains in the country; but as the years roll on the critical faculty seems to become atrophied, and it is interesting now to be able to discuss the phenomenon without being called on for one's 'reason in writing' by one's immediate superior. (A rebellious humorist has said that reasons in writing are called for only when it is perfectly well known that you have no reasons to give.) . . .

"If a junior officer puts forward a suggestion the implication is that a senior officer might have thought of it, ought to have thought of it, and didn't think of it.

"The attitude, therefore, tends to be that the proposal has been thoroughly considered by wiser and more experienced heads and rejected for good and sufficient reasons.

"After being squashed a sufficient number of times according to his tenacity the junior officer ceases to put forward unwelcome suggestions, and by the time that he in his turn achieves seniority, he has usually absorbed the attitude of his erstwhile superiors.

"Thinking is so much trouble! It is always easier to say No than to say Yes, especially for a man who is immersed in routine work. If he says Yes, that will involve a lot more thinking, and it may turn out to be wrong after all.

"Here is a real case. For many years the Air Ministry had been seeking a design for an efficient and effective 'crash proof' tank for aeroplanes. Somewhere about 1934 the experts and technicians brought the results of their labours to the officer at the head of the technical branch and said in effect: 'We have failed.' (Explaining why.)

"The stupid officer ought to have said: 'You are mixing up two totally different requirements. Go away and make a self-sealing tank and never mind the crash-proof part.' But he didn't say this. I suppose he was tired and he didn't think. He agreed with the experts.

"I have wondered whether I ought not to conceal this officer's name. These exposures are bad for discipline, and undermine the implicit faith which should be reposed in heads of departments. But for once, in a way, it is good that an awful example should be held up to public obloquy. The officer's name was *Air Marshal Sir Hugh Dowding.*"*

2. In the Legal Profession.

(From 27 Mass. Law Quart., No. 2 February, 1942, p. 31)

Probably, every reader of Dickens was once puzzled, as Mr. Odgers, Q. C., was puzzled. In a lecture, in 1901,* he said:

"When as a boy I read *Pickwick Papers*, I was ... puzzled to know why Mr. Pickwick did not go into the witness-box, and say

*Italics ours.
* "A Century of Law Reform," 203, 216.

that he never promised to marry Mrs. Bardell, and explain how the good lady came to make such a mistake . . . I know now that when *Pickwick Papers* was written neither the plaintiff nor the defendant was ever allowed to give evidence."

"The evidence of interested witnesses," it was said, "can never induce any rational belief."** This view was called by Lord Bowen a 'terrible absurdity' and by Lord Denman 'as false as insulting.'

Lord Brougham and Lord Denman had been suggesters for years. Denman had retired from the bench in 1850 because of his health at the age of 71, as one of the most respected of English judges. Brougham was still active in the House of Lords and the bill to allow parties to testify, drawn by Mr. Pitt Taylor, became known as Lord Brougham's Act;*** but Denman wrote a letter in support of the bill which contributed greatly to its passage, doubtless because the respect for Denman exceeded that for Brougham. This letter is one of the most revealing documents in 19th century legal history. Lord Denman said:

"I have felt discouragement and even humiliation, at receiving the answer of some of my contemporaries to points which I have thought it my duty to lay before them. 'The principle is perfectly right; I cannot answer your reasoning, and I see the objection to the present state of the law, and none to the change, except that it is a change; yet *I can not bring myself to concur in it.*' . . .

"One particular fallacy . . . I have frequently observed . . . tends to increase the aversion of some judges to change. The system which they find they believe to have been established on full deliberation by the wisdom of former ages; and hence impute to all innovators the arrogance of reversing a decision; *whereas in truth the existing system is for the most part the neglected growth of time and accident . . .*"*

Turning now to America, as late as 1851, three Massachusetts lawyers, one soon after a justice of the Supreme Court of the United States, another a later chief justice of Massachusetts, and a third, a leader of the bar, signed a report containing the statement, "we do not think it for the interests of justice or the public morals"** to allow parties to take the stand. This view of justice and public morals was reversed by legislation in 1856 to allow those who knew most about the facts to testify.***

**Lord Bowen's chapter in "Select Essays in Anglo-American Law," Vol. 1, 516, 521, 531, and see Blackstone's Commentaries, Vol. III, Chap. 23, p. 371.

***14 and 15 Vic. C. 99.

*See Arnould's "Life of Denman," Vol. II, 253-4, Law Rev. (1851) 209-211.

**See Report of Commission on the Practice Act of 1851, Hall's Mass. Practice, (1851) p. 156.

***St. 1856 C. 189, St. 1857 C. 655.

THE MASSACHUSETTS HERITAGE PROGRAM OF 1955

By
ALBERT WEST, *Chairman*

The 1955 Massachusetts Heritage Program of the Association was held in conjunction with the observance by the special commission of the 175th anniversary of the Constitution of the Commonwealth. The Commission was given an appropriation of $5,000.00 by the Legislature for its work and voted to finance the Association's history pamphlet on the background of the adoption of the Massachusetts Constitution to be distributed in supply to the history departments of all high schools in the Commonwealth.

No effort was spared to make this pamphlet attractive and of lasting value to the schools. Many schools had complained that no adequate teaching guide was obtainable in order to comply with Chapter 468 of the Acts of 1949, which requires that the history of Massachusetts and its Constitution be taught in the secondary schools. This pamphlet was written to help in supplying that need and to stimulate further efforts in this direction. It has been acclaimed by some and well received by all.

CHIEF JUSTICE REARDON | ADMIRAL MORISON | CHIEF JUSTICE FELLOWS | PRESIDENT SCHNEIDER

We used the Herter mural, the Drafting of the Massachusetts Constitution, in full natural color on the cover. This was the first time this great painting has been published in color and it has excited wide-spread interest. It is one of five murals painted by Albert Herter, the father of the present Governor, who presented them to the Commonwealth in his last year as Speaker of the House in 1943. There is reason to believe that other organizations may follow our lead and reproduce some or all of the others in color. We reproduced, in facsimile, for the first time, the first page of the Constitution and published this on the back page of the pamphlet.

Following last year's pattern we made a lawyer available to those high schools wanting a speaker during Massachusetts Heritage Month. Most of the high schools and a great many service clubs and organizations requested a speaker. The speech of His Excellency John Wright, Bishop of Worcester in 1954, an address of Basil Brewer the distinguished New Bedford publisher which Mr. Brewer supplied at his own expense, and the matter contained in the pamphlet were made available to all speakers. The results were more than gratifying and letters of high praise continue to come to us. The demand for the pamphlet from every conceivable source is evidence of the very great interest on the part of the general public.

The program was climaxed by a dinner on the 175th anniversary of the day when the government of Massachusetts commenced and John Hancock was inaugurated as the first governor under the Constitution, October 25th.

This was an impressive occasion. The main ballroom of the Hotel Statler was filled. The entire Board of Superintendents of the Boston School System attended and Rt. Rev. Timothy J. O'Leary represented the parochial schools of Massachusetts, among other distinguished educators and leading citizens. Hon. Edward J. Cronin, Secretary of the Commonwealth, paid the Association the honor of bringing the original Constitution to the dinner to be viewed by those participating.

The principal speaker was Admiral Samuel Eliot Morison, the foremost authority on the formation of the Constitution, and his address is printed in full in this issue. Honorable Raymond Fellows, Chief Justice of Maine represented His Excellency Edmund S. Muskie, Governor of Maine which was part of Massachusetts under our Constitution until the separation in 1820 at the time of the Missouri Compromise.*

Chief Justice Stanley E. Qua spoke entertainingly.

A telegram from President Eisenhower, (printed on page VI) was read by President Schneider.

Hon. Paul C. Reardon, the recently appointed Chief Justice of the Superior Court was a special guest. Other guests presented were

*Chief Justice Fellows read an original letter of John Adams in 1819 (from the Maine archives) in answer to an inquiry as to the proposal of separation by a member of a Maine committee. This correspondence will be printed in a later issue of the *Quarterly*. Ed.

recently appointed Probate Court Judges, Hon. Edmund V. Keville of Suffolk County and Hon. Beatrice Hancock Mullaney of Bristol County, General Otis H. Whitney, Chester C. Steadman representing the Boston Bar Association, Deborah Greenberg representing the Women's Lawyers Association, and Joseph Ford, Chairman of the Committee on Public Relations of the Massachusetts Bar Association.

Basil Brewer, John Taylor, Erwin Canham, Rt. Rev. Francis J. Lally, represented the press and Paul F. Clark, President of the John Hancock Insurance Company made available funds to distribute enlargements of the Herter mural in full color to the Governors and Chief Justices of the several states. The members of the Special Commission were head table guests and were presented by the Chairman to an appreciative audience.

As pictured below, the National Commander of the Veterans of Foreign Wars, Timothy J. Murphy, a member of the Association, presented on behalf of his organization a citation which was awarded by them to the Massachusetts Bar Association and the Special Commission for their efforts in citizenship education. The award is reprinted in facsimile in the "News In Brief" which is inserted inside the cover of this issue.

Judge Daniel J. Gillen of the Boston Municipal Court was presented, as the sponsor of the legislation which created the special

NATIONAL COMMANDER TIMOTHY J. MURPHY

PRESIDENT SCHNEIDER

Commission. In addition to breaking records for attendance, the dinner set a high mark for performance and was a fitting climax to a great event. The County Chairmen whose efforts helped to make this program a success were awarded a special citation; they are:

Hon. Paul M. Swift, Barnstable	Edwin P. Dunphy, Hampshire
Walter E. Reilly, Berkshire	Thomas M. A. Higgins, Middlesex
Gerald P. Walsh, Bristol	Dennis F. Ryan, Norfolk
Andrew Linscott, Essex	George C. P. Olsson, Plymouth
Joseph T. Bartlett, Franklin	John E. Connelly, Suffolk
William F. Stapleton, Hampden	Paul G. Gearan, Worcester

Special citations were presented by the Association to Joseph Lee, present Chairman of the Boston School Committee, Thomas J. Curtin, Director of the Citizenship Program of the State Department of Education and Thomas C. Heffernan of the Boston School Department who is also a member of the Association, for their help as consultants in the preparation and distribution of the pamphlet.

The members of the special Commission on the 175th anniversary of the Constitution are: Albert West, Chairman, by the Governor; Silvio O. Conte, by the President of the Senate; John W. Costello and Harold Putnam, by the Speaker of the House.

As an inspiring example of the far reaching effect of this work the Massachusetts Teachers Association has invited the Association to participate in a Conference on Citizenship Training Through Public Relations, at the hotel Sheraton Plaza on February 4, 1956. We have been asked to participate because of our "important work in citizenship training directly through the schools or with school cooperation and approval." Thus like dropping a pebble in a pool our circle of influence ever widens. Or, as Frank Grinnell says, the continuous radiation of this program is limitless.

A FORGOTTEN STATUTE OF 1929, WHICH MAY BE CONVENIENT SOMETIMES FOR AN ARBITRATION IN COURT

G. L. CHAPTER 231 SECTION 60 A

Inserted by St. 1929 C. 173 S 1. For reasons see 4th Report of the Judicial Council in 1928, 14 Mass. Law Quarterly No. 3, December 1928 pp. 22-23.

Public Document No. 144

THIRTY-FIRST REPORT

Judicial Council of Massachusetts for 1955

CONTENTS OF THIS REPORT

The Commonwealth of Massachusetts

DECEMBER, 1955.

TO HIS EXCELLENCY, CHRISTIAN A. HERTER
Governor of Massachusetts

In accordance with the provisions of section 34B of chapter 221 of the General Laws (Ter. Ed.) we have the honor to transmit the thirty-first annual report of the Judicial Council for the year 1955

FRANK J. DONAHUE, *Chairman,*
FREDERIC J. MULDOON, *Vice-Chairman,*
LOUIS S. COX,
JOHN E. FENTON,
JOHN C. LEGGAT,
ELIJAH ADLOW,
FRANK L. RILEY,
CHARLES W. BARTLETT,
LIVINGSTON HALL.

As Amended by St. 1927, c. 923, St. 1930, c. 142, and St. 1947, c. 601
Now Appearing as G. L. (Ter. Ed.) Ch. 221, §§ 34A-34C

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A JUDICIAL COUNCIL TO MAKE A CONTINUOUS STUDY OF THE ORGANIZATION, PROCEDURE AND PRACTICE OF THE COURTS.

Be it enacted, etc., as follows:

Chapter two hundred and twenty-one of the General Laws is hereby amended by inserting after section thirty-four, under the heading "Judicial Council," the following three new sections—*Section 34A*. There shall be a Judicial Council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished, and the results produced by that system and its various parts. Said council shall be composed of the chief justice of the supreme judicial court or some other justice or former justice of that court appointed from time to time by him; the chief justice of the superior court or some other justice or former justice of that court appointed from time to time by him; the judge of the land court or some other judge or former judge of that court appointed from time to time by him; the chief justice of the municipal court of the city of Boston or some other justice or former justice of that court appointed from time to time by him; one judge of a probate court in the commonwealth and one justice of a district court in the commonwealth and not more than four members of the bar all to be appointed by the governor, with the advice and consent of the executive council. The appointments by the governor shall be for such periods, not exceeding four years, as he shall determine.

Section 34B. The Judicial Council shall report annually on or before December first to the governor upon the work of the various branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable.

Section 34C. No member of said council, except as hereinafter provided, shall receive any compensation for his services, but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose such expenses for clerical and other services, travel and incidentals as the governor and council shall approve. The secretary of said council, whether or not a member thereof, shall receive from the commonwealth a salary of five thousand dollars.

MEMBERS OF THE COUNCIL

FRANK J. DONAHUE of Boston, *Chairman*
FREDERIC J. MULDOON of Westwood, *Vice-Chairman*

LOUIS S. COX of Lawrence
JOHN E. FENTON of Lawrence
JOHN C. LEGGAT of Lowell
ELIJAH ADLOW of Boston
FRANK L. RILEY of Worcester
CHARLES W. BARTLETT of Dedham
LIVINGSTON HALL of Concord

FRANK W. GRINNELL, *Secretary*, 60 State St., Boston

THIRTY-FIRST REPORT OF THE JUDICIAL COUNCIL OF MASSACHUSETTS

To His Excellency

CHRISTIAN A. HERTER,

Governor of Massachusetts

The Judicial Council was created by St. 1924, Chapter 244 (*See copy printed on opposite page*), "for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the Commonwealth, the work accomplished and the results produced by that system and its various parts."

In 1925, the legislature also submitted the following request to the council.

1925 RESOLVES, CHAPTER 27

"Resolved, That the judicial council is hereby requested to investigate ways and means for expediting the trial of cases and relieving congestion in the dockets of the Superior Court, and, among other things . . . measures for discouraging frivolous appeals; measures for requiring parties to frame issues in advance of trial by greater specification in the declaration of what the plaintiff in good faith claims and greater specification in the answer of what the defendant admits or in good faith denies, with suitable penalties for frivolous or unfounded allegations and denials; ways and means for encouraging, so far as consistent with constitutional rights, trials without jury . . . and any other ways and means that may appear feasible to said council for improving and modernizing court procedure and practice so that, consistently with the ends of justice, the proverbial delays of the law and attendant expense, both to litigants and the general public, may be minimized. (Approved April 24, 1925)."

Since the last report the term of Joseph Goldberg expired and Livingston Hall of Concord was appointed by Your Excellency as a member of the Council for a four year term. Frederick M. Dearborn, Jr. resigned in September on his acceptance of another position.

RECOMMENDATIONS ADOPTED IN 1955

During the last session the legislature adopted, either verbatim, or in substance, the following recommendations of the Council in our 30th report.

Chapter 272, relative to the issuance of search warrants (see 30th report, pp. 23-28 and 46-48).

Chapter 352, relative to transcripts of evidence and filing of appeals to the Supreme Judicial Court in Criminal Cases (see 30th report, pp. 7-9).

Chapter 359, for advancement for trial of cases involving less than $2000 removed by the defendant from a district court to the Superior Court (see 30th report, p. 30).

Chapter 413, relative to a voluntary administrator in connection with informal transfer of a motor vehicle (see 30th report, p. 36).

Chapter 674, relative to judgments in cases of contract in which there are no disputed facts (see 30th report, pp. 16-17).

Bills Recommended and Favorably Reported by the Judiciary Committee But Not Enacted

There were four of these.

A bill relative to concurrent jurisdiction of the Superior Court (see 30th report, pp. 9-10), reported as House 2745 but referred to the next session.

A bill for a moderate fee of $15.00 for a claim of jury trial (see 30th report, p. 12), reported as House 2733, recommitted and again reported "ought to pass" but referred to the next session on May 3. The same bill was reintroduced by Your Excellency by special message (H. 2943) on June 28, but was referred to the next session by the House.

A bill relative to pleadings (see 30th report, pp. 14-16), reported as House 2729, passed by the House and rejected by the Senate.

A bill providing for limited oral depositions in the Superior Court before trial (see 30th report, pp. 12-14) reported as House 2751, referred by the House to the next session.

A bill, relative to venure in District Courts, Senate 603, rejected in the Senate (see 30th report, p. 17).

These recommendations are renewed in this report.

Bills Recommended, But Not Favorably Reported

There were three of these.

A bill to allow limited exceptions by the Commonwealth in Criminal Cases (see 30th report, p. 38).

A bill to prohibit televising and broadcasting of proceedings in which testimony of witnesses is to be taken before a court or other tribunal (see 30th report, p. 39).

For a jury commission to select jurors in a district comprising Middlesex, Suffolk and Norfolk Counties (see 30th report, p. 40).

Negative Recommendations on Bills Referred to the Council for a Report in 1954

The following negative reports on bills referred in 1954 were followed by the legislature.

On House 785, relative to notice to the accused before trial (referred by Resolves of 1954, Chapter 27). For reasons for the adverse report see 30th report, pp. 30-31.

On Senate 603, relative to operation of a motor vehicle under the influence of intoxicating liquor (referred by Resolves of 1954, Chapter 39). For reasons for the adverse report see 30th report, pp. 28-29.

On House 679, relative to stop payment orders on checks or drafts (referred by Resolves of 1954, Chapter 46). For reasons for the adverse report see 30th report, pp. 40-41.

On Senate 355 and Senate 362, relative to conveyances by a spouse, deserted or living apart for justifiable cause (referred by Resolves of 1954, Chapters 10 and 53). For reasons for the adverse report see 30th report, pp. 32-34.

On Senate 43, relative to extending limited equity jurisdiction to district courts (referred by Resolves of 1954, p. 73). For reasons for the adverse report see 30th report, pp. 21-23.

On Senate 794, as to use of district court justices in the Superior Court in eminent domain cases and "in other civil cases" (requested by Resolves of 1954, Chapter 112). For reasons see 30th report, pp. 19-20.

On House 698, relative to larceny (referred by Resolves of 1954, Chapter 10). For reasons see 30th report, pp. 37-38.

Reports Requested by the Legislature in 1955

This year the subject matter of the following thirteen bills was referred to the Council with a request for a report.

House 1115, relative to the examination of persons called as jurors (referred by Resolves, Chapter 1).

House 1117, relative to permitting verdicts by ten jurors in civil cases (referred by Resolves, Chapter 2).

House 616, relative to certificates after change of name (referred by Resolves, Chapter 18).

Senate 302, relative to providing a reasonable statute of limitations under the Workmen's Compensation Law (referred by Resolves, Chapter 20).

House 1846, relative to the appointment of attorneys by the Insurance Commissioner in certain cases (referred by Resolves, Chapter 23).

House 2144, relative to inheritance by illegitimate children and their relatives (referred by Resolves, Chapter 26).

House 1389, relative to a statute of limitations to protect land titles against formal defects in instruments recorded more than 10 years (referred by Resolves, Chapter 27).

House 1390, relative to a statute of limitations to protect land titles against ancient obsolete rights of entry and possibilities of reverter (referred by Resolves, Chapter 27).

Senate 39, relative to costs in civil actions (referred by Resolves, Chapter 29).

House 1357, relative to damages recoverable under death statutes (referred by Resolves, Chapter 37).

House 1607, relative to a supplementary remedy for industrial injuries (referred by Resolves, Chapter 37).

Appendix D of Senate 590 as to mandatory sentences for second gambling offenses (referred by Resolves, Chapter 148).

We discuss these matters in this report.

CONCURRENT JURISDICTION

For reasons stated in our 30th report we again recommend the following

DRAFT ACT

Chapter 4 of the General Laws is hereby amended by inserting at the end of Section 7 the following new clause:—

Supreme Judicial Court and Superior Court—When to have Concurrent Jurisdiction—Words conferring original jurisdiction, or jurisdiction of appeals from an administrative board or officer, on the Supreme Judicial Court shall be held to mean concurrent jurisdiction with the Superior Court unless it is expressly provided that such jurisdiction of the Supreme Judicial Court is to be exclusive.

PUBLIC COST OF TRIALS AND CONGESTION IN THE SUPERIOR COURT AND CERTAIN SUGGESTED REMEDIES

Public Cost of Jury Trials in Which Recovery Was Less Than the Cost of Trial

(Twenty-five years ago the cost of a jury trial, through the county and state treasurers was estimated at $500.00 a day. Today, with increased costs of everything, including increased salaries and increased jurors' compensation, the daily cost must be much more. A jury trial generally takes about a day and often more.)

The following figures are based on the lower $500.00 estimate and one day to a trial.

1953-54		*Public Cost*
Total Jury Cases Tried to a verdict	1730	$865,000
Cases in which there was no recovery	822	$411,000
Cases in which verdict was less than $200	95	$ 47,000
Other cases in which verdict was less than $500	169	$ 84,500
Total of cases in which there was no recovery or less than $500	1086	$574,000

1954-55		*Public Cost*
Total Jury Cases Tried to a verdict	1655	$827,500
Cases in which there was no recovery	777	$338,500
Cases in which verdict was less than $200	84	$ 42,000
Other cases in which verdict was less than $500	132	$ 66,000
Total of cases in which there was no recovery or less than $500	993	$496,500

Discussion

These impressive figures seem to us to deserve the attention of tax payers.

The act of 1924 creating the Judicial Council (which is printed on page 4 of this report) provided that it should "study the organization, rules and methods of procedure and practice of the judicial system of the Commonwealth, the work accomplished, and the results produced by that system, and its various parts," "report annually to the governor upon the work of the various branches," and "submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable."

Within a few months after the creation of the Council, Resolves Chapter 27 of 1925, was adopted as follows:—

> "Resolved, That the judicial council is hereby requested to investigate ways and means for expediting the trial of cases and relieving congestion in the dockets of the Superior Court, and among other things . . . ways and means for encouraging, so far as consistent with constitutional rights, trials without jury . . . and any other ways and means that may appear feasible to said council for improving and modernizing court procedure and practice so that, consistently with the ends of justice, the proverbial delays of the law and attendant expense, both to litigants and the general public, may be minimized. (Approved April 24, 1925.)"

This year and last year, the Council obtained from the clerks of court in all the counties, the figures showing the results of civil cases actually tried in the Superior Court. These figures are tabulated in tables 4 and 5 in the Appendix in this report and in the 30th report for 1953-54. The figures for 1953-54 were summarized on pages 11A-11B of the 30th report. The figures and the cost of trial appear above.

Do not these figures show that too many cases are entered in the court too easily, especially with claims for jury trial, the most expensive method for the public; that, with an expensive system of 73 District Courts, at least those 1086 cases (in 1953-54) and

993 cases (in 1954-55) in which the plaintiff recovered less than the public cost of trial should be tried there more promptly, at less public expense and with at least as much chance of recovery by the plaintiff if he was entitled to anything at all? Do they not suggest that a moderate jury fee would be a reasonable experiment to meet such a problem of delay and waste of time of the Superior Court?

In a letter to the press on May 12, 1955, a trial lawyer of experience said:

> "In all the discussions about jury trials, the most important factors are usually overlooked; namely, that jury trials force settlements; that good cases are usually settled; that cases of little merit are tried; that there are not statistics as to how much money is involved in the jury cases which are settled because of the fear of what a jury will do.
>
> "It is obvious that the present statistics as to small verdicts are meaningless in the absence of statistics as to large settlements. It is further obvious from the experience of California that higher fees are not the answer to congestion."

Just what does this statement mean? There is no question here of "higher jury fees" because we have no jury fee at all in Massachusetts. We are informed of the high jury fees in California which vary in amounts in different counties from $2.00 per juror per day or $24.00 for a jury to $6.00 per juror per day or $72.00 for a jury in other counties, but nothing of the kind is suggested here. The statement quoted above from the letter seems a strong argument in favor of reviving a moderate jury fee such as we had in Massachusetts from 1805 to 1836. The statement quoted "that cases of little merit are tried" simply shows that our Superior Court judges have to spend much of their time on many of those cases in order that other parties who do not want a jury trial may claim it as a threat for "horse-trading" purposes, "because of the fear of what a jury will do." Under the 15th Article of the Bill of Rights, the constitutional right of "parties" in civil cases is "a right to a *trial* by jury" and not a right of a party, or of his lawyer, to claim a threat of "fear of what a jury will do," or for delays or perfunctorily as a matter of habit.

At the Lawyers Institute in Swampscott last June, the statistics were turned into a living picture in the course of a vigorous discussion by lawyers, clerks and judges. There was discussion of removals, jury claims, trials, lists and verdicts. It was recognized that the great majority of cases tried before juries resulted in verdicts by which the plaintiff received nothing or less than $1,000.00 and, as the clerks' returns show, more than half,—nothing or less than $500.00. Those present were reminded of the

old story of the county treasurer standing at the court house door and offering $500.00 to each plaintiff's lawyer, as a means of saving money for the county. The point of the story was justified by the facts as it was pointed out that a jury trial takes 12 people away from their business, pays them $10.00 a day each ($120.00) and then a judge and four or five court officers and clerks and assistants and all the panoply of justice are made available for each case however small the amount involved. While it was recognized that most of the plaintiffs hoped to get more, many of them did not expect to get more than they did get, because they had small or uncertain cases to begin with. It was even suggested that, from the point of view of the public who pay the bills, the picture painted by the facts, was rather "ridiculous".

The reasons for claiming jury trial were also discussed at Swampscott. It was stated that some lawyers seem to think that they must claim a jury in order to remove a case from a District Court to the Superior Court. While that is true in a limited class of cases (as will be explained below) it is not true in motor vehicle cases or most others.

Attention was also called to the fact that the removal blanks used in the District Courts have operated as a suggestion to claim a jury, because of the way in which they have been printed with the words "jury trial" prominently in the middle. Lawyers, like other people, being creatures of habit, are apt to sign the blank with a jury claim, as a matter of routine or because of habit, or because they may want more time for preparation or negotiation or because they don't like the particular judge who would try the case in the District Court. So jury trial may be claimed not because it is wanted with an intention to try, but because something else is wanted. When the case gets into the Superior Court the lawyers may agree to a trial without jury, particularly if it is suggested to them as a way of getting a quicker and shorter trial. But meanwhile the case has clogged the list.

There is no one way of dealing with congestion.

It is a common trait, or habit, of many people not to have much respect for things that they can get for nothing and use them accordingly. Looking at the picture painted by the facts, we think it quite obvious that a jury fee would operate as a "stop, look and listen" sign before they indulged their common habit of claiming an unwanted jury trial at great public expense and delay of other litigants. Such an experiment was recommended more than 20 years ago when congestion and the clamor about it was as great as it is today. In the 29th and 30th reports we stated our belief

that such a jury fee would reduce the number of jury claims by attacking delay and congestion "at its source." We shall never find out until we try.

The Judiciary Committee has reported favorably more than once. His Excellency, the Governor, in two special messages (H. 2510 and H. 2943) supported the recommendation this year.

As one method of approaching congestion and delay we again renew the recommendation of the following

"DRAFT ACT

"'SECTION 1. Section 4 of Chapter 262 of the General Laws, as most recently amended by Section 2 of Chapter 119 of the acts of 1950, is hereby further amended by inserting after the fourteenth paragraph, the following paragraph:

"'For filing a claim for jury trial or a motion to frame issues in the superior court for jury trial or for entry in the superior court of such issues framed by the land court or by a probate court, and transmitted to the superior court, for trial, fifteen dollars.

"'SECTION 2. This act shall take effect on September first in the current year.'"

FORMS OF BLANKS FOR REMOVAL FROM DISTRICT COURTS

In view of the pertinent suggestion that the form of removal blank in use in District Courts operates as an invitation and encouragement of a perfunctory habit of claiming a jury we recommend its revision and to that end an amendment of Section 104 of Chapter 231 of the General Laws to eliminate the requirement of a jury claim for removal of cases within the jurisdictional limits existing prior to 1929. For

DRAFT ACT

See page 18 of the 27th report of the Council in 1951.

OTHER APPROACHES

LIMITED ORAL DEPOSITIONS BEFORE TRIAL

As stated last year in the 30th report:

"A form of flank attack on congestion was suggested 34 years ago by the Judicature Commission, which we have renewed, in a much more limited form, based on the obvious fact that the sooner the facts can be ascertained the

sooner a case will disappear or be disposed of by settlement or otherwise. Accordingly, we renew the recommendation which we made in our 29th Report as an experiment in the Superior Court only, for limited oral depositions, before trial. In the rules of the Federal courts and in other states, this practice has, for years, been allowed even as to all witnesses. We recommend a more limited act applicable only to a party, his agent, servant or employee.

"DRAFT ACT

"Printed on pp. 13-14 of the 30th Report."

Pleading

We also pointed out in the 30th report (p. 14) in connection with the subject of pleading that:

"In 1782 by Chapter 9 the Supreme Judicial Court was expected to make rules of practice. Revised Statutes of 1836, Chapter 81, Section 10, revised the earlier act and provided that the rules should be revised every seven years 'with a view to the attainment as far as practicable of the following rules of practice':

". . . presenting more distinctly the questions to be tried . . . and a more definite statement of the ground of defence;

"expediting the decisions of causes;

"remedying of all abuses and imperfections that may be found to exist in the practice.

"The commissioners in their note to this section stated that its purpose was to 'draw attention to an important part of the practice which is believed to be susceptible of much improvement.'

"The practice of a sweeping general denial in equity cases has been expressly prohibited by Rule 29. We see no reason why the Superior Court should not have power to regulate the procedure in law cases, to carry out the purpose expressed in the statutes and their history—as already quoted, as it has in equity cases, but, because of the wording of the opening sentence of Section 147 of General Laws Chapter 231 relating to permissive forms of pleadings, doubts have arisen as to the authority of the Superior Court to make reasonable regulations, in spite of the provisions of the statutes quoted. We think that in this matter of pleading the doubts should be removed and the courts' authority clearly recognized subject to final control of the Supreme Judicial Court."

Accordingly, we again recommend the following:

DRAFT ACT

Section 147 of Chapter 231 of the General Laws is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:— Section 147. The following forms of pleadings, or any other suitable forms, may be used for the purposes therein indicated, and similar forms with the necessary changes may be used for other like purposes, subject to such changes as the courts shall, respectively, make and promulgate for use in such courts, and subject to the final control of the supreme judicial court, which may by general rule regulate such changes in all the courts of the commonwealth.

SUGGESTIONS TO THE COURT—NO LEGISLATION NEEDED

BETTER PRE-TRIAL PRACTICE

All four of the foregoing proposals for legislation will contribute in one way or another to a more effective internal operation of court business in dealing with cases, especially in pre-trial sessions which need no legislation.

It is a common opinion expressed by members of the bar, and indicated by the figures annually reported to us by the clerks of court, that the practice as administered since the adoption about 1938 of what is now Rule 58 "has broken down to the point of largely failing in its purpose." We called attention to this in the 30th report (p. 11E) and pointed out the difference between Rule 58 and the original order of 1935 under which pre-trial was administered for about three years in Suffolk.

Pre-trial practice as successfully operated in some other states has been written about and talked about all over the country and has been repeatedly demonstrated by experienced pre-trial judges and active practitioners at meetings of the American Bar Association, the latest occasion being at Philadelphia last August. A few weeks ago here in Boston at the meeting of the Alumni of the Suffolk Law School a large group of Massachusetts lawyers were given the opportunity to watch the pre-trial of a motor vehicle tort case, by a pre-trial judge and active trial lawyers from New Jersey and to hear the history of the practice there described by Mr. Justice Brennan of the Supreme Court of New Jersey. They demonstrated the fact that their successful practice was in substance that outlined in the original order of 1935 under which pre-trial was conducted here before the adoption of Rule 58 in Suffolk.

We again recommend to the Court a revival of an effective pre-trial practice in the Superior Court. No legislation is needed. The whole matter is within the control of the court as it was in 1935.

Other Suggestions for Consideration by the Court

We respectfully suggest to the Court the consideration of two experiments especially in Suffolk County, for avoiding loss of time and encouraging waiver of jury trials.

1. *Avoiding Loss of Time*

Jurors are called for four or five weeks of service. We understand that at the end of the month of jurors' service a day or two is sometimes lost because judges do not start a jury case which

may not be finished before the expiration of the jurors' terms as they do not want to hold the jury over to finish a case while a lot of new jurors are sitting around at $10.00 a day doing nothing. Might not this be avoided by setting aside a list of short jury-waived cases for the last two days of each month in jury sessions?

2. *Jury and Jury-Waived Sessions*

If both parties in a case on the jury list are willing to waive a jury if they can try before some available judge without a jury, should they not be given the opportunity to do so, thus avoiding the time and public cost of jury trial and expediting the disposition of the case? If both parties are agreed, is there any objection to allowing them both to choose the judge before whom they are willing to try without jury and arranging the work of judges for such jury waived cases for that purpose.

EXTENSION OF TEMPORARY ACT OF 1954 FOR USE OF DISTRICT COURT JUSTICES IN THE SUPERIOR COURT

Some District Court justices have been called to sit in the Superior Court on misdemeanor cases for about 25 years. Although originally started on a temporary basis and extended every few years, in 1949 the provisions of G. L., C. 212, s. 14B were made effective without limitation as to time. This use of District Court justices has proven of considerable assistance to the Superior Court in handling these cases.

This provision was again placed on a temporary basis by Chapter 668 of the Acts of 1954. The jurisdiction of these District Court justices in the Superior Court was extended to include the trial of motor vehicle tort actions, but the Act provided that their use on both misdemeanor cases and motor vehicle tort cases should not extend beyond September 1, 1956. By another provision of the Act, District Court justices can only be called to sit by the Chief Justice of the Superior Court if their names appear on a list submitted for the purpose by the Administrative Committee of the District Courts.

We recommend the extension of this Act for five years, with clarifying amendments to meet some problems which have arisen in connection with its extension to motor vehicle tort cases. District Court justices have continued to be called to sit on misdemeanor cases since the enactment of the 1954 Act. But technical and other difficulties have, so far, prevented their use to sit on motor vehicle tort cases. Under the 1954 Act, if the District Court justice before whom such a case was tried should, by reason of

disability, death, etc., be unable to sign or return exceptions taken at the trial, to make a report after he has reserved the case for report to the Supreme Judicial Court, or to make other post-trial dispositions provided for by statute, there was no provision for the assignment of some other justice to do so. In addition, there was no provision to permit such post-trial dispositions after the expiration date of the Act, as to trials held before this date.

A five-year extension of this Act would continue the use of District Court justices in misdemeanor cases, and would allow experimentation with their use in motor vehicle tort cases over a long enough period to yield worthwhile data. With amendments to correct these legal difficulties, there would be no further obstacles to the use of these justices in the motor vehicle tort cases. We also see no reason why the Chief Justice of the Municipal Court of the City of Boston should not also be allowed to designate justices of his Court to be available to sit in the Superior Court.

We recommend the following

DRAFT ACT

SECTION 1. Chapter 212 of the General Laws is hereby amended by striking out section 14B, inserted by section 1 of chapter 668 of the acts of 1954, and inserting in place thereof the following section:

Section 14B. A justice of a district court shall, at the written request of the chief justice of the superior court, sit in the superior court at the trial or disposition with or without a jury in any part of the commonwealth of any motor vehicle tort action, or of any violation of a by-law, order, ordinance, rule or regulation made by a city or town or public officer or of any misdemeanor except conspiracy or libel, and during the continuance of such request shall have and exercise all the powers and duties which a justice of the superior court has and may exercise in the trial and disposition of such cases.

No justice so sitting shall act in a case in which he has either sat or held an inquest in the district court or otherwise has an interest. No justice of the district court shall so sit in the superior court, as aforesaid, unless his name appears on a list submitted to the chief justice of the superior court for the purpose of this section by the chief justice of the municipal court of the city of Boston, if he is a justice of that court, or by the administrative committee of the district courts, if he is a justice of any other district court.

In the event that by reason of his physical or mental disability, death, resignation, retirement, or removal any justice presiding at a trial pursuant to this section shall fail to sign or return exceptions taken at the trial, to make a report after he has reserved the case for report to the supreme judicial court, to enter a verdict or finding after reserving leave, with the assent of the jury, to do so, to set aside the verdict in a civil action and order a new trial, for a cause for which a new trial may by law be granted, or otherwise to

exercise any of the powers and duties granted to him by this section in the disposition of such case, the chief justice of the superior court may assign any other justice authorized to sit in the superior court pursuant to this act, or any justice of the superior court, to have and exercise such powers and duties.

SECTION 2. This act shall not be operative after September first, nineteen hundred and sixty-one, except that any justice sitting in the superior court pursuant to this act at the trial of any case prior to such date, shall continue thereafter, upon assignment by the chief justice of the superior court, to have and exercise all the powers and duties granted to him by this act in the disposition of such case.

HOUSE 1389. AN ACT TO PROTECT UNREGISTERED TITLES TO LAND AGAINST FORMAL DEFECTS, IRREGULARITIES AND OMISSIONS IN INSTRUMENTS RECORDED MORE THAN TEN YEARS

(Referred by Resolves, Chapter 27)

We recommend this bill with slight amendments for reasons stated below. The bill reads—

Chapter 184 of the General Laws is hereby amended by adding at the end thereof a new section 24, as follows:—

Section 24. When any owner of land the title to which is not registered, or of any interest in such land, has signed an instrument in writing conveying or purporting to convey his land or interest, or in any manner affecting or purporting to affect his title thereto, and the instrument, whether or not entitled to record, has been recorded, and indexed under the owner's name, in the registry of deeds for the district wherein such land is situated, and a period of ten years has elapsed since the instrument was accepted for record, and the instrument or the record thereof because of defect, irregularity or omission fails to comply in any respect with any requirement or requirements of law or statute relating to seals, corporate or individual, to acknowledgment, certificate of acknowledgment, witnesses, attestation, proof of execution, or time of execution, to recitals of consideration, residence, address, or date, or to evidence of authority of a person signing for a corporation who appears from a certificate of condition or other public record filed on behalf of the corporation to have been at the time of signing the president or treasurer or a principal officer of the corporation,—such instrument and the record thereof shall notwithstanding any or all of such defects, irregularities and omissions, be valid for all purposes to the same extent as though the instrument and the record thereof had originally not been subject to the defect, irregularity or omission, unless any person or persons entitled in event of invalidity on account of the defect, irregularity or omission shall within said period of ten years have commenced an action to have the instrument set aside or declared invalid and caused notice of the action to be recorded in said registry of deeds and noted on the margin of the record of the instrument, and in event of such action

unless the instrument is thereby in due course set aside or declared invalid. This section shall apply to instruments accepted for record prior to its effective date as well as to those accepted thereafter, except that for instruments accepted for record prior to January first, nineteen hundred and fifty, the period instead of being ten years shall be until January first, nineteen hundred and sixty.

Land is the basic asset of the Commonwealth. It is in the public interest as well as the private interest of the owner, that it should be readily transferable by sale or mortgage with as little expense as possible. For the purposes of sale or mortgage the value of the land depends largely on the record title under our recording system which dates back to about 1640. The record title depends on the contents of the written instruments copied in the registries of deeds and the compliance with legal rules as to formal execution, acknowledgment, recording, etc. Not infrequently because of inadvertence, or lack of information or care, or because of bad advice, documents are recorded which on examination by a subsequent title examiner disclose the formal defects specified in the bill (H. 1389) and he is obliged to challenge the title and cause expense, or loss of a sale or a loan for the parties. Every year these purely formal defects become more numerous as the chain of title grows longer on the record. Such formal defects may require expensive proceedings in the courts, which ought not to be necessary, to clear the title from the possibility of attack by a law suit, although no one has any intention or desire to make such an attack. There seems no sound reason why this state of affairs, which benefits no one, but hurts many, as well as contributing to clogging the courts, should continue when it can be cured by a statute of limitations. We submit in Appendix A, a letter from the draftsman and petitioner explaining in detail the reasons for the carefully limited wording in the bill for Massachusetts as compared with the broader and looser wording of statutes in some other states.

The proposal is also strongly supported by the contents of Basye on "Clearing Land Titles", published in 1953 and containing an exhaustive account of the experiments in dealing with the problem throughout the nation.

We recommend House 1389 with a slight change of the bill (as printed above) by substituting the word "effective" for the word "valid" and by striking out the words following the word "unless" to the period and substituting the words appearing in italics in the following draft which we recommend.

DRAFT ACT

AN ACT TO PROTECT UNREGISTERED TITLES TO LAND AGAINST FORMAL DEFECTS, IRREGULARITIES AND OMISSIONS IN INSTRUMENTS RECORDED MORE THAN TEN YEARS.

Chapter 184 of the General Laws is hereby amended by adding at the end thereof a new section 24, as follows:—

Section 24. When any owner of land the title to which is not registered, or of any interest in such land, has signed an instrument in writing conveying or purporting to convey his land or interest, or in any manner affecting or purporting to affect his title thereto, and the instrument, whether or not entitled to record, has been recorded, and indexed under the owner's name, in the registry of deeds for the district wherein such land is situated, and a period of ten years has elapsed since the instrument was accepted for record, and the instrument or the record thereof because of defect, irregularity or omission fails to comply in any respect with any requirement or requirements of law or statute relating to seals, corporate or individual, to acknowledgment, certificate of acknowledgment, witnesses, attestation, proof of execution, or time of execution, to recitals of consideration, residence, address, or date, or to evidence of authority of a person signing for a corporation who appears from a certificate of condition or other public record filed on behalf of the corporation to have been at the time of signing the president or treasurer or a principal officer of the corporation,—such instrument and the record thereof shall notwithstanding any or all of such defects, irregularities and omissions, be *effective* for all purposes to the same extent as though the instrument and the record thereof had originally not been subject to the defect, irregularity or omission, unless *within said period of ten years a proceeding shall have been commenced on account of the defect, irregularity or omission, and notice thereof shall have been recorded in said registry of deeds and noted on the margin of the record of the instrument and, in the event of such proceeding, unless relief is thereby in due course granted.* This section shall apply to instruments accepted for record prior to its effective date as well as to those accepted thereafter, except that for instruments accepted for record prior to January first, nineteen hundred and fifty, the period instead of being ten years shall be until January first, nineteen hundred and sixty.

HOUSE 1390, AN ACT TO PROTECT TITLES TO LAND AGAINST OBSOLETE RIGHTS OF ENTRY AND POSSIBILITIES OF REVERTER

(Referred by Resolves, Chapter 27)

This bill would provide what is known as a "re-recording" act with statute of limitations to protect the marketable title to land against obsolete claims of a very technical and troublesome character. Its purpose is similar to that of House 1389. The bill reads:

No proceeding based upon any right of entry for condition broken to which a fee simple in land is subject, or upon any right in land succeeding upon termination of a fee simple determinable, created before the second day of January, nineteen hundred and fifty-five, shall be maintained either at law or in equity in any court unless a person or persons owning such right, or one of them if there be more than one, shall by himself, or by his attorney, agent, guardian, conservator or parent, on or before the first day of January, nineteen hundred and sixty-five, file in the registry of deeds, or, in the case of registered land, in the registry district of the land court, for the district in which the land is situated, a statement in writing, duly sworn to, describing the land and the nature of the right and the deed or other instrument creating it, and where it may be found if recorded or registered, and in case of registered land naming the holder or holders of the outstanding certificate of title and stating the number of said certificate, and in case of land not registered naming the person or persons then owning the fee subject to such right, or assessed for taxes thereon at the last prior assessment date.

Such statement shall be received and recorded or registered upon payment of the fee required by law, and shall be indexed in the grantor index under the person or persons so named, and in case of registered land, noted on the certificate of title. The register and assistant recorder shall also keep a separate list of such statements.

This act shall apply to all such rights whether or not the owner thereof is a corporation or a charity or a government or governmental subdivision, or is under any disability or out of the commonwealth, and it shall apply notwithstanding any recitals in deeds or other instruments heretofore or hereafter recorded, except statements filed as above provided. Nothing in this act shall be construed to extend the period of any other applicable statute of limitations or to authorize the bringing of any proceeding to enforce any right which has been or may be barred by lapse of time or for any other reason.

Because of the technical character of the bill a brief explanation may help in understanding its very practical purpose.

Possibilities of Reverter

A possibility of reverter is a limitation on the title to land and its significance lies in the fact that the ownership of the land may possibly terminate and immediately become vested in the grantor (former owner) or his heirs. Usually the possibility of reverter is created in a deed or in a will which gives title to an estate in land "while" or "so long as" some situation continues; or "until" some situation comes to pass. For example, if a charitable citizen of the Town of Dover granted a large tract of land to the Town "so long as" said land shall be used for a playground; and later the town built a school on such land, it might well be that the title immediately revests in the heirs of the original grantor and such heirs

would, if the title did revest in them, have a right to eject the town and its school from the land.

The possibility always remains in the creator of the interest or his heirs; it cannot be sold to a third person. If it is clear that the grantor intended by his deed to provide an estate for a specific purpose and to have the estate come to an end when the land was no longer devoted to such purpose, an estate on special limitation is created giving rise to a possibility of reverter.

Such possibilities of reverter which are created after January 1, 1955, become estates in fee simple (absolute ownerships) unless the special limitation causes a reverter within thirty years; and in some cases less than that period of time. Thus, if a grant was made now that the estate should remain in the grantee (present owner) until the Custom House Tower was demolished, unless the tower was demolished within thirty years from the date of the grant, the possibility of reverter will vanish forever. This qualification on possibilities of reverter which are created after January 1, 1955, was made by Chapter 641 of 1954. There is no qualification on possibilities of reverter which were created prior to January 1, 1955.

Rights of Entry for Condition Broken

A similar interest in real property is the right of re-entry for condition broken. This is a grant of title to land on an express condition subsequent. For example: Amos Ames grants 90 acres of land in the Town of Sandwich to Bemis Burns and his heirs upon the express condition that if Burns sells intoxicating liquors on the premises, Amos Ames may re-enter and forfeit Burns' estate for breach of the condition. Ames and his heirs do not get the estate back automatically as is the case in a possibility of reverter; they must first exercise their power to re-enter and then may regain possession of the lands. This type of interest, if created after January 1, 1955, is now qualified, inasmuch that unless intoxicating liquor is sold on the land within thirty years after the estate on condition is granted, the heirs of the grantor will have no right to re-enter thereafter. As to estates created in such terms prior to 1955, the heirs of the original grantor (owner) still have the power to re-enter even after generations have passed.

The Rule Against Perpetuities (which seeks to limit some interests which might arise in the future) does not apply either to the possibility of reverter or the right of re-entry for condition broken. The continued existence of such rights or interests therefore is now unlimited; and they go on forever. The rights in persons benefited

by such interests do not accrue until the happening of some event and such event may come to pass in one year or in one hundred years. Until such event takes place, no statute of limitations applies which prevents action to dispossess the present land holder. There are doubtless many tracts of land in this Commonwealth which are subject to such rights. Since the existence of such interests makes titles something less than complete, the fact that there is a possibility of title passing automatically to some other person than the present owner, or the fact that the title might be forfeited because of the breach of a condition disqualifies the title in the eyes of many attorneys and hence it is frequently impossible to obtain a mortgage on such property.

It is not common to create such future interests today because of the mortgage situation, and because such interests are disfavored.

A person charged with giving an opinion as to the validity of a title to real estate is technically required to seek out every right and interest in the land even if this means that the title must be searched for 150 years or more. The cost of such title searches is considerable. It is customary to search titles for sixty years back, but as there is the real possibility that some of these ancient rights might affect the title, longer searches are sometimes felt necessary. It might be said that these ancient sleeping dogs lie unnoticed and neglected except when turned up in a title examination. It is a very rare instance when these rights are sought to be enforced by the heirs of some person who created them as far back as 1800. Not infrequently one of these skeletons in the closet of the registry of deeds is turned up. The heirs might be sought out in order that the interest can be released. In most cases the existence of such rights is a complete surprise to such heirs and very often none of them can be found.

Land subject to these interests has been developed, improved, sold many times over and the title has been passed on many times without any consideration ever having been given to the rights of the dead past. Taxes have been paid over and over to the town and city governments where such land is located and yet there is the lingering possibility that the peaceful landholding and financial encouragement derived from mortgages might be disturbed.

The bill under consideration seeks to quiet such titles. It provides that if there is anyone who is seriously interested in preserving or enforcing such rights, such person can take a single step of recording a statement in the Registry of Deeds within ten years from January 1, 1955, in order to preserve his rather remote rights.

We recommend the following

DRAFT ACT

SECTION 1. Chapter 260 of the General Laws is hereby amended by inserting a new section 31A as follows:

"No proceeding based upon any right of entry for condition broken or possibility of reverter, to which a fee simple or fee simple determinable in land is subject, created before the second day of January, ninteen hundred and fifty-five, shall be maintained either at law or in equity in any court after the first day of January, nineteen hundred and sixty-six, unless on or before the first day of January, nineteen hundred and sixty-six, (a) the condition has been broken or the reverter has occurred, and a person or persons having the right of entry or reverter shall have taken possession of the land, and in case of entry made after January 1, 1957, shall have filed a certificate of entry pursuant to General Laws (Ter. Ed.) Chapter 184, Section 19, or (b) a person or persons having the right of entry, or who would have it if the condition were broken, or would be entitled if the reverter occurred, or one of them if there be more than one, shall by himself, or by his attorney, agent, guardian, conservator or parent, have filed in the Registry of Deeds, or in the case of registered land, in the registry district of the land court, for the district in which the land is situated, a statement in writing, duly sworn to, describing the land and the nature of the right and the deed or other instrument creating it, and where it may be found if recorded or registered, and, in case of registered land, naming the holder or holders of the outstanding certificate of title and stating the number of said certificate, and, in case of land not registered, naming the person or persons appearing of record to own the fee subject to such right or possibility, or shown by the records of the tax assessors at the last prior assessment date to be the owner or owners thereof.

Such statement shall be received and recorded or registered upon payment of the fee required by law, and shall be indexed in the grantor index under the person or persons so named, and in case of registered land, noted on the certificate of title. The register and assistant recorder shall also keep a separate list of such statements.

This section shall apply to all such rights whether or not the owner thereof is a corporation or a charity or a government or governmental subdivision, or is under any disability or out of the commonwealth, and it shall apply notwithstanding any recitals in deeds or other instruments heretofore or hereafter recorded, unless a statement is filed as above provided. Nothing in this section shall be construed to extend the period of any other applicable statute of limitations or to authorize the bringing of any proceeding to enforce any right which has been or may be barred by lapse of time or for any other reason."

SECTION 2. Section 19 of Chapter 184 of the General Laws is hereby amended by inserting after the word "mortgage" in the second line thereof the words "and if proceedings based upon right of entry for breach of such condition have not been barred by Section 31A of Chapter 260," so that the same shall read:

"Section 19, Entry for Breach of Condition.

If real property has been conveyed by deed on a condition therein expressed, which is not a mortgage, and if proceedings based upon right of entry for

breach of such condition have not been barred by Section 31A of Chapter 260, the grantor, his heirs and devisees upon breach of such condition may enter on the granted premises in order to revest the title; and a certificate of such entry, made and sworn to before any officer duly qualified to administer oaths by two competent witnesses and recorded within thirty days after such entry in the registry of deed for the county or district where the land lies, or a duly certified copy of the record of such certificate, shall after the expiration of three years from such entry, be prima facie evidence of such breach and entry. If a grantor, his heirs or devisees made such entry and certificate and filed the certificate as herein required prior to June ninth, eighteen hundred and ninety-eight, said certificate or duly certified copy of the record thereof shall have like force and effect."

ANCIENT LEASES

Under the provisions of Chapter 186, Section 1, if land is leased for a term of one hundred years or more, the term shall, so long as fifty years thereof remain unexpired, be regarded as an estate in fee simple. This does not give the lessee an estate in fee simple; it simply gives to his interest the dignity and quality equal to a life estate. The statute does not take away from the lessor his reversion. In many of the leases which are covered by this section, the rental is sometimes insignificant and bears no relation to the value of the land or the use to which it is put.

There are many ancient leases of real property recorded in various registries of deeds wherein the original term was from one hundred to 999 years. Many of these leases have been effectively lost and their existence is sometimes never discovered unless a search of the title extending back for 150 years or more is made. In many of such leases no rent is being paid by the tenants; and none has been demanded for a great many years. In the meantime the property has been treated as owned by the tenant outright and it has been improved, built upon and mortgaged by the present holders. There are some ancient leases under which rents are being paid now and which are active.

The purpose of the change in the law suggested is to settle titles to the leasehold where nothing remains in the original landlord or his heirs but the reversion (the title after the period of the lease has run). Some of these provide for nominal rents such as "one peppercorn per annum payable at the home of the lessor." Such nominal rents should not be considered as rents which would keep the lease active even if paid or tendered at the home of the lessor (if it could be located). The rights under these leases are

similar to ancient possibilities of reverter and rights of re-entry for condition broken.

Accordingly, we recommend legislation to treat these ancient leases in the same manner as the interests which are treated in connection with H. 1390. Leases which are actually in effect or under which rent is being paid are not affected. Leases which have a term upon which less than fifty years is left to run are not affected. It is also provided that if any rent has been paid or tendered within twenty years prior to the enactment of the statute the lease will not be affected in any way.

We recommend the following,

DRAFT ACT

Section 19 of Chapter 184 of the General Laws is amended by adding at the end thereof the following:

No proceeding based upon any right of entry or forfeiture which arises by reason of the termination of any estate which is treated as a fee simple in land by virtue of G. L. Ter. Ed. Chapter 186, Section 1, created before the second day of January 1956 shall be maintained either at law or in equity in any court unless a person or persons having such right shall by himself or by his attorney, agent, guardian, conservator or parent, on or before the first day of January, nineteen hundred and sixty-six file in the registry of deeds, or in the case of registered land in the registry district of the land court, for the district in which the land is situated, a statement in writing, duly sworn to, describing the land and the nature of the right and the deed or other instrument creating it, and where it may be found if recorded or registered, and in case of registered land naming the holder or holders of the outstanding certificate of title and stating the number of said certificate, and in case of land not registered naming the person or persons then appearing of record to own the fee subject to such right, or shown by the records of the tax assessors at the last prior assessment date to be the owner or owners thereof. Such statement shall be received and recorded or registered upon payment of the fee required by law, and shall be indexed in the grantor index under the person or persons so named, and in case of registered land, noted on the certificate of title. The register and assistant recorder shall also keep a separate list of such statements.

This section shall apply to all such rights whether or not the owner thereof is a corporation or a charity or a government or governmental subdivision, or is under any disability or out of the commonwealth, and it shall apply notwithstanding any recitals in deeds or other instruments heretofore or hereafter recorded.

This section shall not apply to any lease-hold estate which has less than fifty years of its term unexpired, or to any lease-hold estate mentioned in Chapter 186, Sec. 1, where rent due under a written instrument has been paid or tendered to the owner of the reversion within a period of 20 years prior to Jan. 1, 1957.

HOUSE 1357, RELATING TO THE DEATH STATUTES

(Referred by Resolves, Chapter 87)

This bill reads:—

AN ACT TO CORRECT CERTAIN ERRORS IN THE DEATH STATUTES AND TO MAKE CERTAIN PROVISIONS AS TO THE MAXIMUM DAMAGES RECOVERABLE FOR DEATH UNIFORM.

SECTION 1. Chapter 229 of the General Laws is hereby amended by striking out section 2, as appearing in section 2, chapter 427, acts of 1949, and inserting in place thereof the following:—

Section 2. If a person or corporation operating a common carrier of passengers, except a railroad, street railway or electric railroad, by reason of his or its negligence, or of the unfitness or negligence of his or its servants or agents while engaged in his or its business, causes the death of a passenger, or of a person in the exercise of due care who is not a passenger or in his or its employment, or, if such person or corporation by reason of his or its wilful, wanton or reckless act, or of the wilful, wanton or reckless act of his or its servants or agents while engaged in his or its business, causes the death of a passenger, or a person, whether or not in the exercise of due care, who is not a passenger, or in his or its employment, he, or it, shall be liable in damages in the sum of not less than two thousand nor more than twenty thousand dollars, to be assessed with reference to the degree of culpability of the defendant, or of his or its servants or agents, and recovered and distributed as provided in section one.

SECTION 2. Chapter 229 of the General Laws is hereby amended by striking out section 2A, as appearing in section 3, chapter 427, of the acts of 1949, and inserting in place thereof the following section:—

Section 2A. If a person or corporation operating a railroad, street railway or electric railroad, by reason of his or its negligence, or of the unfitness or negligence of his or its agents or servants while engaged in his or its business, causes the death of a passenger, or of a person in the exercise of due care who is not a passenger or in his or its employment, or if such person or corporation by reason of his or its wilful, wanton or reckless act, or of the wilful, wanton or reckless act of his or its agents or servants while engaged in his or its business, causes the death of a passenger, or of a person, whether or not in the exercise of due care, who is not a passenger or in his or its employment, such person or corporation shall be liable for damages in the sum of not less than two thousand nor more than twenty thousand dollars, to be assessed with reference to the degree of his or its culpability or that of his or its servants or agents, which shall be recovered in an action of tort begun within two years after the injury which caused the death by the executor or administrator of the deceased, to be distributed as provided in section one; but a person or corporation which operates a railroad shall not be so liable for negligence in causing the death of a person while walking or being upon such railroad contrary to law or to the reasonable rules and regulations of the carrier, and a person or corporation which operates an electric railroad shall

not be so liable for negligence in causing the death of a person while so walking or being on that part of the railroad not within the limits of a highway.

If an employee of a person or corporation operating a railroad, being in the exercise of due care, is killed under such circumstances as would have entitled him to maintain an action for damages against such person or corporation if death had not resulted, the person or corporation shall be liable in the same manner and to the same extent as he or it would have been if the deceased had not been an employee.

SECTION 3. Chapter 229 of the General Laws is hereby amended by striking out section 2C, as appearing in chapter 250, Acts of 1951, and inserting in place thereof the following section:—

Section 2C. Except as provided in sections one, two and two A, a person who by his negligence, or by the negligence of his agents or servants while engaged in his business, causes the death of a person in the exercise of due care who is not in his employment or service, or a person who by his wilful, wanton or reckless act, or by the wilful, wanton or reckless act of his agents or servants while engaged in his business, causes the death of a person, whether or not in the exercise of due care, who is not in his employment or service, shall be liable in damages in the sum of not less than two thousand nor more than twenty thousand dollars, to be assessed with reference to the degree of his culpability or of that of his agents or servants, to be recovered in an action of tort, commenced, except as provided by sections four and ten of chapter two hundred and sixty, within two years after the injury which caused the death by the executor or administrator of the deceased, to be distributed as provided in section one.

SECTION 4. Section 6E of chapter 229 of the General Laws, as appearing in section 7 of chapter 427 of the acts of 1949, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:—

The amount of damages which may be awarded in an action brought under section two B shall not be less than two thousand dollars nor more than twenty thousand dollars.

We recommend passage of this bill, with drafting changes which would consolidate §§ 2, 2A and 2C of Chapter 229 into one section. These three sections, as now in force, and as proposed to be amended by this bill, govern all wrongful death proceedings except those brought against employers by their employees.

Beginning in 1898, three distinct lines of statutory authority for wrongful death actions against railroads and railways, against other common carriers, and against other persons, have been carried through the various statutory consolidations, with varying procedures and limits of liability. The early history of these statutes is summarized in *Brooks v. Fitchburg and Leominster Street Railway Company,* 200 Mass. 8. One of the purposes of H. 1357 is to eliminate differences in procedure and in limits

of liability between these sections. Limits of not less than $2,000 nor more than $15,000, set in 1946 and 1949 for all wrongful death actions, remained uniform only until 1951, when the limits were raised to $2,000 to $20,000 for wrongful death actions against persons other than common carriers and employers. The bill would establish uniform limits of $2,000 to $20,000 in all these cases. This appears fair, for there seems no reason for giving more favorable treatment in this respect to employers and common carriers than to other persons.

An anomaly has also long existed between actions for wrongful death on the one hand, and other tort actions inter vivos on the other. The wrongful death statutes do not impose liability for causing the death of persons (except passengers) who were contributory negligent. But in inter vivos actions, it is well settled that contributory negligence is no defense to a tort action which is based on a wilful, wanton or reckless act. This rule originated in *Aikens v. Holyoke Street Railway Co.*, 184 Mass. 269 at 271, 1903, and was applied in *Potter v. Gilmore*, 282 Mass. 49, 1933, and in *Baines v. Collins*, 310 Mass. 523 at 526, 1942. This is the general rule in other jurisdictions as well; see 2 Restatement of Torts, § 482, 1934, providing that contributory negligence should not bar recovery for "harm caused by the defendant's reckless disregard for the plaintiff's safety."

House 1357 would amend the present law, to apply this rule to wrongful death actions. In so doing, it is following the normal tort rule, and no question of comparative negligence is involved. Nor does the bill change the existing provisions in the wrongful death statutes providing that contributory negligence should be a defense to actions based upon negligence and gross negligence (except as to passengers of common carriers).

The bill further changes § 2A of Chapter 229 by dropping the provisions for indictment and criminal prosecution against railroads and railways, as a means of recovering a fine (with the same limits as provided for civil actions for wrongful death) to be paid to the executor or administrator of the deceased. No reported cases of such a proceeding by indictment have been found since *Commonwealth v. Brockton Street Railway Co.*, 143 Mass. 501, 1887, and its continuance appears unnecessary. Repeal of this provision for recovery of a fine by indictment would not, of course, affect the liability of a railroad and its agents for manslaughter under G. L. Chapter 265, § 13.

We have recommended drafting changes, as noted above, to consolidate in one section the separate recoveries now provided

in §§ 2, 2A, and 2C of Chapter 229. We have also provided for a uniform two-year statute of limitations, with the "hit and run" exception of G. L. Chapter 260, § 4B.

House 1357, in its original form, also carried forward a provision in Chapter 229, § 2A making a railroad corporation liable under the section to one of its employees "killed under such circumstances as would have entitled him to maintain an action for damages against such corporation if death had not resulted." We have omitted this sentence from the redraft. Railroad employees are now covered under the Workmen's Compensation Act, to the extent that they are not covered by the Federal Employers Liability Act. See G. L. Chapter 152, § 1(4), and *Armberg v. B. & M. Rr. Co.*, 276 Mass. 418, 1931. They are also covered by the general actions for damages for death of employees in force under §§ 2B, 3, and 6C of Chapter 229. In view of this, separate treatment of actions of wrongful death on behalf of employees of railroad corporations under § 2A no longer appears necessary.

Accordingly, we recommend a redraft of H. 1357, reading as follows:

DRAFT ACT

SECTION 1. Chapter 229 of the General Laws is hereby amended by striking out section 2, as appearing in section 2 of chapter 427 of the acts of 1949, section 2A, as appearing in section 3 of chapter 427 of the acts of 1949, and section 2C, as appearing in chapter 250 of the acts of 1951, and inserting in place thereof the following section:—

Section 2. A person (1) who by his negligence causes the death of a person in the exercise of due care, or (2) who by wilful, wanton or reckless act causes the death of a person, whether or not in the exercise of due care, or (3) who operates a common carrier of passengers and by his negligence or by his wilful, wanton or reckless act causes the death of a passenger, whether or not in the exercise of due care, shall be liable in damages in the sum of not less than two thousand nor more than twenty thousand dollars, to be assessed with reference to the degree of his culpability and to be distributed as provided in section one; except that (1) the liability of an employer to a person in his employment shall not be governed by this section, and (2) a person operating a railroad shall not be liable for negligence in causing the death of a person while walking or being upon such railroad contrary to law or to the reasonable rules and regulations of the carrier, and (3) a person operating a street railway or electric railroad shall not be liable for negligence for causing the death of a person while walking or being upon that part of the railroad not within the limits of a highway. A person shall be liable for the negligence or the wilful, wanton, or reckless act of his agents or servants while engaged in his business to the same extent and subject to the same limits as he would be liable under this section for his own act, except that the damages shall be assessed with reference to the degree of culpability of his agents or servants. Actions under

this section shall be commenced in tort by the executor or administrator of the deceased within two years after the injury which caused the death, except as provided in section four-B of chapter two hundred and sixty.

SECTION 2. Section 6E of chapter 229 of the General Laws, as appearing in section 7 of chapter 427 of the acts of 1949, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:

The amount of damages which may be awarded in an action brought under section two-B shall not be less than two thousand nor more than twenty thousand dollars.

SENATE 302, PROVIDING FOR A REASONABLE STATUTE OF LIMITATION UNDER THE WORKMEN'S COMPENSATION LAW

(Referred by Resolves, Chapter 37)

(MAJORITY REPORT)

This bill proposes, 1st, a two year statute of limitations under the workmen's compensation law, and 2nd, that a case upon which payments have been made may not be re-opened after five years from the date of the last payment of compensation. It reads, with the new words printed in italics:

SECTION 1. Chapter 152 of the General Laws is hereby amended by striking out section 41, as most recently amended by section 2 of chapter 326 of the acts of 1923, and inserting in place thereof the following section:—

Section 41. No proceeding for compensation for an injury shall be maintained unless a notice thereof shall have been given to the insurer or insured as soon as practicable after the happening thereof, and unless the claim for compensation with respect to such injury has been made *within two years* after its occurrence; or, in case of the death of the employee, or in the event of his physical or mental incapacity, within six months after death or the removal of such incapacity; or, in case an action against a third person is discontinued as provided in section fifteen, within thirty days after such discontinuance. *The word "occurrence" as used in this section in cases of occupational disease means that date upon which the employee first suffered disability therefrom.*

SECTION 2. Said chapter 152 is hereby further amended by striking out section 49, as most recently amended by chapter 125 of the acts of 1923, and inserting in place thereof the following section:—

Section 49. The claim for compensation shall be in writing, and shall state the time, place, cause and nature of the injury. It shall be signed by the person injured, or, in the event of his death, by his legal representative, or by a person to whom payments may be due, or by a person in behalf of any of them, and shall be filed with the department. A claim for compensation shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, cause or nature of the injury unless it is shown that it was the intention to mislead and that the insurer was in fact misled thereby. Failure to make a claim within the time fixed by section forty-one *shall bar proceedings*

under this chapter. If the insurer has executed an agreement in regard to compensation with the employee or made any payment for compensation under this chapter, claim for further compensation shall be made within five years of the date of the last payment of compensation.

The only changes in the present Section 41 are, as italicized, the substitution of two years for six months and the addition of the last sentence as to "occupational diseases." Both of these changes give more time to the employee.

As to Section 49, the last two sentences of the present section read:

"Failure to make a claim within the time fixed by section forty-one shall not bar proceedings under this chapter if it is found that it was occasioned by mistake or other reasonable cause or if it is found that the insurer was not prejudiced by the delay. In no case shall failure to make a claim bar proceedings if the insurer has executed an agreement in regard to compensation with the employee or made any payment for compensation under this chapter."

Discussion

The Workmen's Compensation Law made injuries from industrial accidents part of the cost of business and lifted them all out of the courts by providing measured damages regardless of negligence to be determined by the Industrial Accident Board. It is just as important from any practical business point of view for an employer and for an insurer to be informed within a reasonable time of an industrial accident claim as it is for any defendant in a tort case outside of industry, in order that he may investigate and settle or prepare for his defense by finding witnesses and other evidence, while still alive and available. In the case of insurance companies which cover most compensation cases, reserves must be set up.

In its 23rd report in 1947 (p. 39) the Council recommended an act providing that actions of tort

"Shall be commenced only within two years next after the cause of action accrues."

This recommendation was adopted as Section 2A of G. L. C. 260 by Chapter 274 of the Acts of 1948. In the discussion of the subject in the 23rd report (p. 39), the list of two years limitations, in Section 4 of Chapter 260 was referred to and the Council then stated the reasons for its recommendation (on p. 40), as follows:

"In our opinion, the period for actions of tort in general should be fixed more reasonably at two years instead of six. The evidence in regard to what happened in connection with injuries to person or property is apt to be much more varied and difficult to secure than in actions of contract. Casual ob-

servers who happen to be present at the time of an accident are scattered. They are constantly moving from place to place or leaving the state and their memories of what happened after a lapse of years becomes more and more uncertain, as may be readily understood if one tests one's own memory for a period of six years. We believe that a two year period would be fairer and would provide ample time in which to collect the evidence to ascertain the extent of the injuries, provide ample time for negotiations for settlement before suit is brought, would materially reduce the chances of loss of the evidence by the death of witnesses or their disappearance as well as reducing materially the uncertainty of their memories and would reduce to a more reasonable period the uncertainty as to liability to persons who are charged with causing the damage. The rapidity of modern life and the infinite variety of distractions incident to it emphasize all this and lead us to believe that a shorter period of two years which already applies to the list of tort actions above specified would be more in the interest of justice than the present longer period of six years."

Claims under the Workmen's Compensation Act used to be "tort" claims before that act was adopted. We think that similar reasons apply to them and bring them within the legislative policy of prompt notice and action illustrated most recently by Chapter 235 of 1955 relative to motor vehicle accidents covered by compulsory insurance.

The majority of the Council think Senate 302 is fairer to employee, employer and insurer than the present law and more in the public interest in sound business practice. Accordingly, they recommend the bill, but to avoid apparent uncertainty and inconsistency, we recommend the addition of a section repealing Section 44 of Chapter 152, a copy of which appears below in a footnote.* The first sentence of that Section 44 is in both the present and proposed Section 49 and is therefore, mere repetition. The second sentence is not consistent with Senate 302.

DRAFT ACT

With the addition of a Section 3 striking out Section 44, they recommended the passage of Senate 302. Mr. Muldoon, Mr. Bartlett and Judge Fenton dissent.

DISSENT

Mr. Muldoon, Mr. Bartlett and Judge Fenton dissent from this recommendation.

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*"S. 44. NOTICE NOT INVALID FOR INACCURACY, ETC.—Such notice shall not be held invalid or insufficient by reason of an inaccuracy in stating the time, place or cause of the injury unless it is shown that it was the intention to mislead and that the insurer was in act misled thereby. Want of notice shall not bar proceedings, if it be shown that the insurer, insured or agent had knowledge of the injury, or if it is found that the insurer was not prejudiced by such want of notice."

H. 1607 FOR "A SUPPLEMENTARY REMEDY" FOR INJURIES IN INDUSTRY

(Referred by Resolves, Chapter 37)

This bill reads as follows:

AN ACT TO INCREASE THE SAFETY OF WORKMEN IN INDUSTRY BY PROVIDING A SUPPLEMENTARY REMEDY FOR INJURIES RESULTING FROM THE NEGLIGENCE OF THE EMPLOYER OR HIS AGENTS.

Chapter 152 of the General Laws is hereby amended by inserting after section 67 thereof the following new section:—

Section 67A. (1) In addition to all other rights created by this chapter, and without any election, and notwithstanding any of the provisions of sections twenty-three, twenty-four, twenty-five, sixty-six, sixty-seven or any other provisions of this chapter, every insured person, including a self-insurer shall be liable in damages to any person suffering injury while he is employed by such insured person, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin of such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such employer, or by reason of any defect or insufficiency, due to its negligence, in its buildings, machinery, vehicles, ways or other appliances and equipment.

(2) In all actions under this section, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished in proportion to the amount of negligence attributable to such employee; provided, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such insured person of any statute or regulation providing for the safety of employees contributed to the injury or death of such employee.

(3) In all actions under this section, the employee shall not in any case be held to have assumed the risk of the injury, either voluntarily or contractually.

(4) Any right of action given by this chapter to a person suffering injury shall survive to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, but in such cases there shall be only one recovery, for the same injury.

(5) Benefits paid under workmen's compensation may be deducted from the tort recovery, and vice versa, it being the intention of this act that the employee or beneficiaries have the greater of the two recoveries, but not both. The attorney obtaining the tort recovery may charge the person entitled to reimbursement for workmen's compensation a reasonable fee plus expenses out of said reimbursement.

We do not recommend this bill. It would, in our opinion, not only undermine the whole structure of the Workmen's Compen-

sation system and defeat its purposes, but would distort and complicate procedure and practice and increase to an unlimited extent more and more congestion in our already congested court dockets.

The history of the development of Workmen's Compensation in Massachusetts appears in a careful report of a special commission in 1912 (appointed under Resolves C. 120 of 1910). The law has balanced purposes with balanced provisions to carry them out. The purposes were to provide greater safety for employees and stabilize the risks of industry by imposing on the employer liability *without or regardless of fault* for standardized and measured compensation, avoiding the delay, expense and uncertainty of the earlier law suits based on negligence, thus making industrial accidents part of the costs of industry and, incidentally, reducing congestion in our courts by lifting the thousands of such accidents out of the courts and transferring them to the Industrial Accident Board.

The proposed bill (H. 1607) would upset all the balanced purposes and provisions by restoring all the expense, delay, uncertainty of law suits for alleged negligence regardless of any contributory negligence and would invite increased congestion of courts by an increased invitation to contingent suits for their nuisance value stimulated by an express provision for lawyers' fees in case of recovery. And all this would be on top of the compensation provisions so that the claimant could try both ways and take the higher figure.

To illustrate this thinking as to the proposed bill, in terms of practice and procedure, it seems obvious that instead of being a "supplementary" remedy as the title suggests, it would be a parallel proceeding which would force employers and insurance companies to treat practically every industrial injury, not as a compensation claim, but as a possible and probable action for negligence for uncertain damages which they would have to prepare to defend. Ordinary business sense would force them to stop voluntary payments of compensation unless they receive a common law release in order to avoid being exposed to a tort action.

Translating this into figures, we understand that there are about 30,000 industrial disability cases annually, that approximately 95% of them are paid for under the compensation act *without litigation*, that payments in about 75% of these begin within 14 days of the date the disability begins, and about 85% within 4 weeks. All this would have to stop unless possible liability in a tort action is released in each case. Result? More delay, more expense, more injustice, more congestion in the courts, more litiga-

tion in the Industrial Accident Board, more dissatisfaction and irritation in all directions.

We think the proposed bill thoroughly unsound not only as to the Compensation System but in its effect on the operation of our judicial system, its practice and procedure.

H. 1115, AS TO EXAMINATION OF JURORS

(Referred by Resolves, Chapter 1)

THE PRESENT STATUTE

The present statute in regard to the examination of jurors in court, both in criminal and civil cases (section 28 of G. L., Chapter 234) reads:

"Section 28. EXAMINATION OF JURORS.—Upon motion of either party, the court shall, or the parties or their attorneys may under the direction of the court, examine on oath a person who is called as a juror therein, to learn whether he is related to either party or has any interest in the case, or has expressed or formed an opinion, or is sensible of any bias or prejudice, therein; and the objecting party may introduce other competent evidence in support of the objection. If the court finds that the juror does not stand indifferent in the case, another shall be called in his stead."*

The bill referred to us (H. 1115) would strike out that section and substitute a very different one, as follows:

THE PROPOSED BILL, H. 1115

Section 1. Chapter 234 of the General Laws is hereby amended by striking out section 28, as appearing in the Tercentenary Edition, and inserting in place thereof the following section:—

Section 28. Either party shall have the right to examine on oath a person who is called as a juror to determine whether such juror is related to either party, or has any interest in the case by virtue of his occupation or otherwise, or has expressed or formed an opinion, or is sensible of any bias or prejudice, therein. Any appropriate question propounded to elicit facts concerning the state of mind of the jurors respecting the parties or the general subject matter of the action, may be addressed to the panel or its individual members. The limits of the examination shall rest in the discretion of the court.

Section 2. This act shall take effect on October first, nineteen hundred and fifty-five.

We do not recommend this bill. Its obvious effect when compared with the present section 28 (above quoted) is to throw the control of the selections of jurors into the hands of the lawyers

* Chapter 38 of the Acts of 1955 has provided for increased information as to jurors.

instead of the court. The examination of jurors is now conducted by the court and the extent of it and whether the lawyers shall be allowed to examine a juror is in the sound judicial discretion of the court where it belongs, as explained by Mr. Justice Holmes in Com. v. Poisson, 157 Mass. 510 at p. 512 and in the case of Com. v. Cero, 264 Mass. 264 at pp. 270-271.

We think H. 1115 is not in the public interest and that it would delay, prolong and complicate trials and add to congestion on the criminal and civil side of the court.

HOUSE 1117—TO PERMIT A VERDICT BY 10 JURORS IN CIVIL CASES

(Referred by Resolves, Chapter 2)

This bill (H. 1117) reads:

"Chapter 234 of the General Laws is hereby amended by inserting after section 26B the following section:—

"Section 26C. In all civil cases to be tried with a jury in the superior court a verdict reached by ten members of the jury shall be sufficient."

We oppose this bill for the following reasons:

Such a bill for majority or "split" verdicts was referred to the Council in 1945 by Resolves, Chapter 14 of that year and was discussed, at length, in the 21st report of the Council (pp. 11-18).

The bill *then referred*, as quoted on p. 11, was to insert a new section 80A in Chapter 231, as follows:

"In the trial of any civil action it shall not be necessary for all the jurors to agree upon a verdict but a verdict may be rendered by nine or more members of the panel, and said verdict shall be decisive of the issues in the action."

The only difference between that and the bill (H. 1117) *now* referred to us is the provision for a verdict by 9 instead of 10. The following reasons then stated apply equally to the bill now referred. The report then covered 7 pages, parts of which we quote as follows:

"1. The Constitutional Question

"The first problem which arises in regard to this bill is entirely independent of any question of advisability. Articles 12 and 15 of the Bill of Rights create a right to 'trial by jury' both in criminal cases and in civil cases *at law*. The 'trial by jury' thus established as a right under the Massachusetts Constitution, and also under the Constitution of the United States, is a 'common law' jury trial (see *Com.* v. *Dorsey*, 103 Mass. 412, 418, *Com.* v *Welosky*, 276 Mass. 398, 401, and *Capital Traction Co.* v. *Hof of 174 U. S.* 13-16).

"In the early history of English law a jury consisted of men in the neighborhood who had personal knowledge (or who acquired it) of the facts of the dispute, but by about the middle of the 14th. century the jury had come to be recognized as judges of the facts, not within their personal knowledge, but on the evidence presented to them, and by that time the number of the jury had become established as twelve and the requirement of unanimity in their verdict had become established as part of the common law. That requirement remained thereafter. (Forsyth 'History of Trial by Jury,' 238-241; Pollock & Maitland 'History of English Law,' 623-625; Thayer 'Preliminary Treatise' on Evidence, 86-90.)

"While this right to jury trial, both in civil and criminal cases, is a constitutional right, it is a right which may be waived by the person entitled to it and this fact is recognized in the statutes and in the decisions both of the Massachusetts and United States Courts, but a person cannot be forced to accept less than his right to a common law trial. In one of the latest opinions of the Supreme Court of the United States in which jury trial is discussed (*Patton* v. *U. S. 281* U. S. at p. 288) the court said that one of 'the essential elements as they were recognized in this country and in England when the constitution was adopted' is 'that the verdict should be unanimous.' This requirement of unanimity would still exist even if the parties in a civil suit agreed to accept a verdict of a jury consisting of less than twelve men. This statement of the Supreme Court of the United States reflects also what we understand to be the law of Massachusetts in regard to the requirement of unanimity. It seems clear that the proposal to allow verdicts by a majority in civil cases without the consent of both parties (which is the proposal contained in House 933) would require a constitutional amendment even if the proposal was considered advisable.

"2. The Debate in the Constitutional Convention of 1917-18

"This whole subject was debated at length in the Constitutional Convention of 1918 in connection with proposals to amend the Constitution by authorizing majority verdicts or authorizing the legislature to provide for them. All of these proposals were rejected by that body. The mere fact that a practice is old is, of course, not alone sufficient reason for its retention, but when the practice reflects the judgment of generations of experienced and thoughtful men it is worth keeping. As the reasons for the requirement of unanimity and for the rejection of the proposed changes were stated with convincing clarity and force in the debate in the Convention referred to which appears in Vol. 1 of the Debates, pp. 389-435, we quote at some length from the remarks of men of experience in support of the adverse report of the Judiciary Committee of which the chairman was the late Hon. James M. Morton of Fall River.

"Following these quotations we submit the figures showing the number of disagreements in the various counties of the state.

"Extracts from Volume I of the Debates in the Convention of 1917

"Mr. Shea of Dalton—p. 399

'If every man in this Convention is satisfied, and I think most of us are,

to retain the present rule in criminal cases, why is it? Is it not true that we wish to get the protection of every man on that jury? Is this because liberty and life are more precious? Yes, indeed they are, but is the principle any different? Gentlemen of the Convention, we of the Judiciary Committee thought not. . . .'

"Mr. Charles F. Dutch of Winchester—p. 403

'I won my first jury case only because one man out of the twelve held up and insisted on serious consideration of the matter for some three hours and won the entire jury to his view, so that my client, who in that case was a poor client and could not afford another trial and could not afford to lose, was protected by the unanimous rule. . . .'

"Mr. John W. McAnarney of Quincy—pp. 404, 405, 406, 407

'What is necessary that a just verdict should be returned when twelve such men meet to consider the proposition? It can be answered in one word,—deliberation. Fair deliberation is what is needed to bring in a just verdict. . . .

'And is not that, sir, what you would want if you were on trial before a jury? Do you want cases decided without due and careful deliberation by each juror? The very purpose of unanimity is not to preserve a relic of antiquity, but it is to carry into the jury room that which every one of us asks, expects and ought to be able to receive,—calm, deliberate, thoughtful consideration by those who are passing upon our property rights or liberties.

'Shall you say to the jurors of this Commonwealth: "Gentlemen, you have not got to decide this case by sitting down calmly and thoroughly considering it; go out and poll it as you would a political contest and decide it by a majority verdict"? Or shall you say to them: "Gentlemen, remembering the responsibilities of your oath approach the consideration of this question from the viewpoint of studying it thoroughly and carefully and then bring in your decision whichever way it may go"? . . .

'Mr. Chairman, this is a grave and an important subject. My friend on my left in the first division (Mr. Dutch) when he recited the experience of his first case struck the keynote. . . .

'In conclusion, not one lawyer of experience in the trial of jury causes, not one party who ever had been a litigant in our courts, not a man who ever has served on a jury, came before the committee and advocated such a change as is proposed, not one. Their absence was eloquent and significant. . . .'

"Mr. Asa P. French of Randolph—pp. 409-410

'Ordinarily when a jury stands ten to two there may be a difference of opinion as to whether the two are right or wrong. But unanimity is based upon the well-known human experience that minorities are often right, that the strong men sometimes will stand up against the bias and prejudice of their fellows who are weaker and will not allow an injustice to be done, whether it be against the rich or the poor. . . .'

"Hon. James M. Morton of Fall River—p. 415

'Something is said about the compromises which juries make. Of course they compromise, and their right to compromise is recognized by the court,

as it should be, and as it has been, as a means of arriving at a just verdict. When a verdict is rendered the court accepts it, and the fact that it is reached by way of compromise between intelligent and honest men should not, and does not invalidate it. . . .

'Before I was a lawyer I sat on a jury.

'Mr. Chairman, my personal experience when I served as a juryman, my observation since then while I have been taking such activities as I could as a member of the bar, has been this: That sometimes the one man of the twelve who sat to listen to a case supplied the very thing which leavened the whole loaf and which inclined and finally succeeded in obtaining a jury to realize and to consider all points of view and to arrive finally at a better decision than they would if that man were disregarded. What would happen were you to authorize the Legislature to pass a majority law, and the Legislature then did so? Simply this: Twelve men would walk into a jury room. They would sit down. They would vote at once. Two or three among them would vote in the minority; the others as a majority would agree. Perhaps among that minority might be the most honest, the most disinterested, the most learned, the most experienced and the most sympathetic with the people, and with the corporations, and with all parties involved, who are sitting upon that jury. In the minority might be one man or two men or three men who might have the pluck, the backbone and the audacity to defy the judge sitting in the courtroom, who had purposely and intentionally sought to sway the minds of that jury and to induce them to reach a conclusion which he favored. There might be in that minority, sitting in that jury, one man or two men or three men who, with sufficient force, with sufficient persuasion, with sufficient ability, might explain to their colleagues on that jury their view of the situation, so as to convert them. That has been done, Mr. Chairman and gentlemen, far more times than any of my learned friends here, lawyers of great ability, have had juries disagree on cases which they have tried before them. The one man or the two men or the three men have done far more to obtain justice for the poor man they speak of, they have done far more to prevent gross injustice to every party in a case, than in my humble opinion could be attained by giving a majority of any number less than the whole of a jury the power to decide a question. To pass such a measure, to embody it in the Constitution, to institute it in legislation, would mean simply that when a jury considered a case they would give it simply snap and immature judgment, and not a mature deliberation. I hope, Mr. Chairman and gentlemen of the committee, that this measure will be defeated. . . . "

The Council then referred (p. 16) to an adverse report on majority verdicts in 1918 by a special committee of the Massachusetts Bar Association of which the late Thomas W. Proctor and the late John E. Hannigan, two men of long experience, were members. That committee reported that "in 1916, out of 2562 jury trials of all sorts, civil and criminal, there were only 71 disagreements throughout the Commonwealth (see 3 Mass. Law Quart. No. 3, Feb. 1918, pp. 81-83)."

The Council reported later figures obtained from the clerks of court of the various counties up to 1945 as follows:

"Number of Disagreements (Prior to 1945)

"In Middlesex County during the past five years there were 7 disagreements. In Norfolk County during the past five years there were 3 disagreements; in Hampden County during the past ten years there were 6 disagreements; and in Franklin County 5; in Barnstable County none; in Hampshire County, in ten years 9; in Berkshire County, none in ten years; in Plymouth County, in 19 years from November 1926 to September 1945, 9 disagreements out of 1,274 civil cases submitted to a jury and from February 1927 to September 1945, 18 disagreements out of 1,432 criminal; in Essex County, 6 in civil, 12 in criminal in the last ten years; in Bristol County, 3 in civil cases in the last five years and 1 in a criminal case in the last ten years; and in Worcester County, 3 in civil cases and 3 in criminal cases in the last seven years.

"The most illuminating figures appear in Suffolk County in a report by Mr. Phinney, the Executive Clerk of the Chief Justice of the Superior Court, covering a period of 15 years on both civil and criminal side of the court. The marked decrease is noticeable in disagreements following the adoption of the practice of 'pooling' the jurors as a single source of supply in place of the old system of a separate jury panel for each session."

SUFFOLK COUNTY

Superior Court, *Civil* Verdicts — Disagreements

Year ending June 30	*For Plf.*	*For Deft.*	*Total*	*Disagreements*
1931	641	282	923	33
1932	521	270	791	22
1933	426	213	639	21
1934	430	272	702	20
1935	405	222	627	11
1936	391	270	661	12
1937	356	216	572	18
1938	321	301	622	5
1939	406	270	676	7
1940	406	314	720	8
1941	366	290	656	6
1942	413	289	702	6
1943	433	313	746	3
1944	371	198	569	10
1945	309	204	513	2

Ordered verdicts not included.

Two or more Verdicts may have been in one case.

July pooling began in May, 1935.

Pre-trial Sessions began in August, 1935.

SUFFOLK COUNTY

SUPERIOR COURT, *Criminal* VERDICTS — DISAGREEMENTS

Calendar Year	*Verds. Guilty*	*Verds. Not Guilty*	*Total Verdicts*	*Disagreements*
1931	614	1154	1768	28
1932	789	1064	1853	12
1933	809	1107	1916	14
1934	887	1076	1963	11
1935	657	859	1516	14
1936	437	575	1012	5
1937	423	474	897	9
1938	316	392	708	1
1939	366	455	821	–
1940	323	539	862	8
1941	305	447	752	4
1942	218	325	543	–
1943	180	360	540	1
1944	237	339	576	3
Jan.-June, inc. 1945	75	168	243	–

Pro forma verdicts included.

Jury pooling began in May, 1935.

Two or more verdicts may have been in one case.

The figures from 1945-1954 are:

1945	178	340	518	–
1946	175	345	520	1
1947	168	393	561	4
1948	195	389	584	4
1949	150	237	387	5
1950	155	303	458	–
1951	204	250	454	4
1952	213	253	466	4
1953	200	310	510	10
1954	270	372	642	2

A table showing provisions in other states will be found in Appendix D on page 72.

H. 1117 seems clearly unconstitutional and for the reasons quoted from the debate in 1918, while no human practice is perfect in its operation, the requirement of unanimity to secure consideration of the views of the fairest minded jurors seems to us the most essential element of a jury trial and more important than the number of the jury. We think H. 1117 is against the interests of justice.

HOUSE 2144—RELATIVE TO INHERITANCE BY ILLEGITIMATE CHILDREN AND THEIR RELATIVES

(Referred by Resolves, Chapter 26)

This bill (H. 2144) provides:

"Section 5 of chapter 190 of the General Laws is hereby amended by striking out the word 'ancestor' therefrom and inserting in place thereof the word 'relative' so as to read as follows:—

"Section 5. An illegitimate child shall be heir of his mother and of any maternal relative, and the lawful issue of an illegitimate person shall represent such person and take by descent any estate which such person would have taken if living."

We do not recommend this bill.

A somewhat related matter was referred to the Council in 1952 and was discussed in our 28th Report, pp. 65-66. That bill proposed that the words "blood issue," if used in a will, should be held to mean, not only legitimate issue but also illegitimate issue. We did not recommend that bill because it would cause unfortunate family litigation and confusion in property arrangements, in many ways.

The present bill (H. 2144) would cause similar and, possibly, more, confusion in regard to the settlement of estates of all the collateral relatives of the mother of an illegitimate child, not only when there is a will, but when the estate is intestate. "Relatives" may be very numerous. Their families and their executors or administrators might be subjected to claims of illegitimate relationship involving difficult questions of proof and involving, perhaps, what is called "nuisance value" which might seriously delay and complicate the settlement of estates and cause both family distress and losses, because of the appearance of some such claimants. As stated in our 28th Report, p. 65, "it is for the legislature to decide the question of policy" whether to invite such family and property confusion and its incidental uncertainty as to the marketability of land titles by the passage of the bill.

We do not think it should be done.

HOUSE 1846, RELATIVE TO APPOINTMENT OF ATTORNEYS BY THE INSURANCE COMMISSIONER IN CERTAIN CASES

(Referred by Resolves, Chapter 23)

This bill (H. 1846) reads as follows:

SECTION 1. In motor vehicle tort cases involving cross actions wherein both parties are represented by the same insurer, the commissioner of insurance shall designate one of the defense counsel.

SECTION 2. This act shall take effect upon its passage.

We do not recommend this bill.

Under the compulsory insurance law there is a standard form of car insurance policy which contains the following clause:

"II. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS

"As respects the insurance afforded by the other terms of this policy under coverages A, B and C the company shall:

"(a) defend any suit against the insured alleging such injury, sickness, disease or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; but the company may make such investigation, negotiation and settlement of any claim or suit as it seems expedient;"

A similar clause appears in policies of additional and extra-territorial losses not covered by the minimum compulsory coverage. This clause is part of the contract between the car owner and the insurance company which binds the company to defend the owner and recognizes, by the contract, its right and duty to defend itself, as the money of the company is at stake in each case. As stated by the court in Abrams v. Factory Mutual Liability Insurance Co., 298 Mass. 141, at p. 143.

"The policy not only includes a promise by the insurer to defend against claims and law suits, but gives it the sole right to defend to the entire exclusion of the insured. Such a clause in such a policy has been referred to as creating both an obligation and a privilege, Rollins v. Bay View Auto Parts Co., 239 Mass. 414, 420."

The insurance company having the duty, as well as the right to defend or settle must do it carefully and fairly for otherwise it may be liable to the insured for bad faith or negligence. See Abrams v. Factory Mutual, above cited, and especially Tully v. Travellers Insurance Co., 118 Fed. Supp. 568. The company cannot divest itself of responsibility, and, as indicated in the cases cited, could not do so under the proposed bill (H. 1846) which seems so inconsistent with the heavy contractual obligation involved in the compulsory insurance system as to be legally un-

workable in practice. Obviously, cross-suits by parties, both insured in the same company, may occasionally present difficult situations to be handled by the company, but the company's obligation is not changed. It seems obvious that, under the proposed bill questions would arise, 1. Who should notify the Commissioner and when? 2. On what ground would the Commissioner decide which of two defendants are to have counsel appointed by him? 3. What problems might arise if the lawyer appointed proved incompetent or hostile? 4. How much patronage would be involved in the appointments? These are merely a few of the difficulties which the bill suggests. Without further elaborating the picture, the cases of cross-actions to which the bill refers are governed by the contract in the insurance policy under which the company is bound to exercise its judgment as to settlement, and when necessary to select independent counsel and, generally, to perform its contractual obligations subject to suit if it is guilty of bad faith or negligence.

All this contractual result seems an incidental part of the system of compulsory insurance. For the reasons stated we do not recommend the bill.

HOUSE 616, RELATIVE TO CERTIFICATES AFTER CHANGE OF NAME

(Referred by Resolves, Chapter 18)

This bill proposes to amend Section 13 of G. L. Chapter 210, which now reads as follows:

"SECTION 13. NOTICE AND CERTIFICATES: FILING COPY OF BIRTH RECORD, etc.

The court shall, except for good cause shown, before decreeing a change of name, require public notice of the petition to be given and any person may be heard thereon, and, upon entry of a decree the name as established thereby shall be the legal name of the petitioner, and the register may issue a certificate, under the seal of the court, of the name as so established.

No decree shall be entered, however, until there has been filed in the court a copy of the birth record of the person whose name is sought to be changed and, in case such person's name has previously been changed by court decree, either a copy of the record of his birth amended to conform to the previous decree changing his name or copy of such decree; provided; that the filing of any such copy may be dispensed with if the judge is satisfied that it cannot be obtained. (1851, 256, s. 2; GS 110, s. 12; PS 148, s. 13; RL 154, s. 13; 1930, 153, s. 1; 1931, 115, s. 1; 1943, 155, s. 2; 1948, 247.)"

House 616 proposes the following addition to this Section 13.

"SECTION 1. The first paragraph of section 13, chapter 210, of the General Laws, as appearing in chapter 247 of the acts of 1948, is hereby amended by adding at the end thereof the following sentence:—The register shall send a copy of said certificate to the city or town clerk of the city or town where the petitioner was born if in the commonwealth, otherwise to the city or town clerk of the city of town where the petitioner resided at the time of filing of petition.

"SECTION 2. After receipt of such copy, the city or town clerk shall thereafter issue notices or certificates when requested, using the petitioner's changed name only."

The second paragraph of the *present* Section 13, above quoted, is practically identical with Section 6, Chapter 210, relating to adoption and change of name, and both paragraphs were inserted by Chapter 155 of the acts of 1943.

The bill is opposed by the city and town clerks on the ground that it would suppress facts which should appear.

We do not recommend the bill.

APPENDIX D OF SENATE 590 RELATIVE TO MANDATORY SENTENCE FOR A SECOND CONVICTION OF CERTAIN GAMBLING CRIMES

(Referred by Resolves, Chapter 148)

The report of the Special Commission to study the existence and extent of organized crime and gambling, etc. Senate 590 contained (p. 12) as one of its recommendations, Appendix D.

"We are satisfied that the punishments for violations of sections 7, 8, 9 and 17 of Chapter 271 of the General Laws which have been imposed by the courts of the Commonwealth, particularly by the Superior Court, have been inadequate. In spite of this, however, we believe that in the case of first offenders there should be no minimum sentence imposed by law. In the case of second and subsequent offenders, however, we believe that sentences provided in those sections should be mandatory. We append suggested legislation (Appendix D) to carry out this recommendation."

One member of the commission dissented from this recommendation as follows:

"I dissent from Appendix D, depriving the judges of our courts of the power to suspend sentence.

"I can visualize many cases where a suspended sentence would best serve the end of justice, and I want the judges of our courts to have the power to suspend a sentence under this section."

The bill to carry out the recommendation of the majority was printed as Appendix D and was referred to the Council. It would change Section 10 of Chapter 271 by inserting in that section the words in italics below, so that the section would read:

SECTION 10. Whoever, after being convicted of offence mentioned in the three preceding sections *and in section seventeen of this chapter*, commits the like offence, or any other of the offences therein mentioned, shall in addition to the fine therein provided, be punished by imprisonment for not *less than three months nor* more than one year, *and the sentence imposing such fine and such imprisonment shall not be suspended.*"

The new italicized words contain the mandatory sentence without probation by suspension recommended in the Commission's report as above quoted.

The four sections, 7, 8, 9 and 17, involved and referred to above read as follows—

"SECTION 7. Setting up or promoting Lottery, Gift, etc.—Whoever sets up or promotes a lottery for money or other property of value, or by way of lottery disposes of any property of value, or under the pretext of a sale, gift or delivery of other property or of any right, privilege or thing whatever disposes of or attempts to dispose of any property, with intent to make the disposal thereof dependent upon or connected with chance by lot, dice, numbers, game, hazard or other gambling device, whereby such chance or device is made an additional inducement to the disposal or sale of said property, and whoever aids either by printing or writing, or is in any way concerned, in the setting up, managing or drawing of such lottery, or in such disposal or offer or attempt to dispose of property by such chance or device, shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year."

"SECTION 8. Permitting Lottery, etc. to be Set up, etc. in a House, etc.—Whoever, in a house, shop or building owned or occupied by him or under his control, knowingly permits the setting up, managing or drawing of such lottery, or such disposal or attempt to dispose of property, or the sale of a lottery ticket or share of a ticket, or any other writing, certificate, bill, token or other device purporting or intending to entitle the holder, bearer or any other person to a prize or to a share of or interest in a prize to be drawn in a lottery, or in such disposal of property, and whoever knowingly suffers money or other property to be raffled for in such house, shop or building, or to be won there by throwing or using dice or by any other game of chance, shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year."

"SECTION 9. Selling Lottery Tickets, Share, etc., or Aiding Therein.—Whoever, for himself or for another, sells or offers for sale or has in his possession with intent to sell or offer for sale, or to exchange or negotiate, or aids or assists in the selling, exchanging, negotiating or disposing of a ticket in such lottery, or a share of a ticket, or any such writing, certificate, bill, token or other device, or a share or right in such disposal or offer, as is mentioned in section

seven, shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year."

"SECTION 17. Penalty for Buying and Selling Pools or Registering Bets.—Whoever keeps a building or room, or any part thereof, or occupies, or is found in, any place, way, public or private, park or parkway, or any open space, public or private, or any portion thereof, with apparatus, books or any device for registering bets, or buying or selling pools, upon the result of a trial or contest of skill, speed or endurance of man, beast, bird or machine, or upon the result of a game, competition, political nomination, appointment or election, or whoever is present in such place, way, park or parkway, or any such open space, or any portion thereof, engaged in such business or employment; or, being such keeper, occupant, person found or person present, as aforesaid, registers such bets, or buys or sells such pools, or is concerned in buying or selling the same; or, being the owner, lessee or occupant of a building or room, or part thereof, or private grounds, knowingly permits the same to be used or occupied for any such purpose, or therein keeps, exhibits, uses or employs, or knowingly permits to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets, or for buying or selling such pools, or whoever becomes the custodian or depositary for hire, reward, commission or compensation in any manner, of any pools, money, property or thing of value, in any manner staked or bet upon such result, shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year."

Chapters 263 to 274 of the General Laws list a multitude of offenses and their penalties. Some such as murder have specified inflexible penalties. Others have mandatory, but flexible, penalties with a maximum and minimum term of imprisonment. For others the penalties are discretionary with the court in the light of the particular facts. There being no common standard of punishment, the question whether the particular offence of gambling calls for a further deterrent of mandatory imprisonment without probation for second offences, as a deterrent recommended by the Special Commission seems to us a question of state policy for the legislature to decide.

We accordingly respectfully ask to be excused from reporting on the matter further.

VENUE IN DISTRICT COURTS

For reasons stated in the 30th report (p. 17) we again recommend the

DRAFT ACT

Appearing on p. 18 of that report, to put all actions of contract and tort on the same footing as motor torts.

SENATE 39, RELATIVE TO COSTS IN CIVIL ACTIONS

(Referred by Resolves, Chapter 29)

Senate 39 is a bill of three pages, revising and increasing the items of taxable costs in civil actions.

The Judicature Commission in 1920 in its final report, referred to this matter, saying

"The system of costs has never been thoroughly studied." . . .

Since that report little interest has been shown in this matter of costs in general until this bill was filed. We think the subject deserves further study and, therefore, reserve this bill for that purpose and later report.

THE USE OF "CERTIFIED MAIL" FOR NOTICES

(No legislation needed)

Chapter 683 of the Acts of 1955 amended § 7 of chapter 4 of the General Laws by adding the following clause:

"Forty-fourth, 'registered mail', when used with reference to the sending of notice or of any article having no intrinsic value shall include certified mail."

This statute permits a considerable saving in various types of notices, since the cost of certified mail is only 25 cents, as against 50 cents for registered mail.

The attention of the members of the bar affected by this statute would, we believe, most effectively be called to its provisions, if confirmatory rules of court were adopted to include a similar definition of the words "registered mail."

We recommend the adoption of a new paragraph to be added to the rules of the Supreme Judicial Court, the Superior Court and the Probate Court as follows:

"The words 'registered mail' in these rules shall include 'certified mail'."

Supreme Judicial Court: To be added to Rule 4; see Rule 11.
Superior Court: To be added to Rule 1; see Rules 13 and 14.
Probate Court: To be added to Rule 1; see Rules 36 and 39.

We recommend that Rules 3 and 10 of the Small Claims Procedure Rules of the District Courts and the Municipal Court of the City of Boston be amended so that the phrase "by registered mail" in these Rules will read "by registered or certified mail."

No change in Land Court Rules is needed as Rule 6 provides

that proceedings shall be governed by the Rules of the Superior Court so far as applicable.

We submit this suggestion in regard to rules of practice and procedure in these courts, for the consideration of the justices thereof, as provided in § 34B of chapter 221 which appears on page 4 of this report.

LIMITED EXCEPTIONS BY THE COMMONWEALTH IN CRIMINAL CASES

Last year we recommended this after reference to the statutes of the United States and of a number of other states allowing exceptions by the government to a limited extent on questions of law in criminal cases. We also referred to the Model Code of Criminal Procedure, prepared by the American Law Institute. While the Council were divided on the advisability of adopting the unlimited practice in Connecticut they were and are still unanimous in recommending government exceptions on the questions of law whether an indictment or information has been legally quashed or dismissed; whether a case has been illegally taken from the jury and a verdict directed for the defendant, and whether an illegal sentence has been imposed, and to that end again recommend the following:

DRAFT ACT

Section 31 of chapter 278 of the General Laws as amended by the chapter 384 of the acts of 1953 is hereby amended by adding at the end thereof the following sentence:—

"Exceptions upon questions of law arising on the quashing or dismissing by the court of an indictment or information; a directed verdict for the defendant; or an illegal sentence may be taken by the Commonwealth in a criminal case in the same manner and to the same effect as if taken by the defendant and when so taken shall be governed by this section. Pending the prosecution and determination of the exceptions the defendant may be admitted to bail on his own recognizance."

The provision for release on the defendant's own recognizance is similar to that in the Federal statute quoted in our 29th report (p. 45) where the whole subject is discussed with references to opinions and to statutes in other jurisdictions.

TELEVISING AND BROADCASTING TESTIMONY

In our previous reports we called attention to a resolution of the American Bar Association,

> "That the American Bar Association condemns the practice of televising and broadcasting the testimony of witnesses when called before investigating committees of Congress and recommends that appropriate action be taken to restrain or prevent it."

The New York legislature, by chapter 241 of the acts of 1952, passed an act quoted in our 29th Report, p. 38, to stop the practice. We recommend an act which was reported (House 2747 of 1954), passed the House and was defeated in the Senate.

However much the public may enjoy the spectacle, experienced judges and lawyers know that the ordeal of witnesses, and we mean honest witnesses, in being examined by lawyers or others is often a severe ordeal under any circumstances. They are often unaccustomed to such proceedings and are shy, nervous and frightened and uncertain. This is, or course, intensified when they are made conscious of being spectacles in a public drama on the screen or on the air. It is not in the tradition of American justice. We think it should be stopped and that Massachusetts should prevent it before it begins here and help to lead the way to better practice. We again recommend the following:

DRAFT ACT

Chapter 268 of the General Laws is hereby amended by adding at the end thereof the following new sections:—

Section 39. No person, firm, association or corporation shall televise, broadcast, take motion pictures or arrange for the televising, broadcasting, or taking of motion pictures within the Commonwealth of any proceedings in which the testimony of witnesses is or is to be taken, before a legislative, judicial or executive body or other public agency or tribunal. Violation of this section shall be punishable by a fine of one thousand dollars or a sentence to jail or the house of correction for not more than one year.

Section 40. No such body, agency or tribunal conducting such a proceeding in this Commonwealth, nor any one on its behalf shall require or permit any person to testify before televising, broadcasting or motion picture instruments or apparatus in operation. Any person may of right refuse to testify before such instruments or apparatus and no proceedings for contempt or other adverse proceedings shall be taken against him for such refusal nor shall such refusal be commented on or made the basis of any inference whatever adverse to the person so refusing.

Sections 39 and 40 may be enforced by proceedings in equity.

Jury Commissioners in a Limited District

For reasons stated at length in our 24th report (pp. 19-23 in 1948), we again renew our recommendation of the bill for a jury commission to select jurors in a district comprising the counties of Middlesex, Suffolk and Norfolk, based on the system successfully administered in Cleveland, Ohio. The movement for the more careful selection of jurors is gradually growing elsewhere and we believe the practice to be a sound one and worthy of consideration here as an experiment in a limited area of three contiguous counties. As stated in our 29th report (p. 40) we renew the recommendation of the draft act printed in the 24th report, pp. 23-26.

An Amendment of the "Fielding Act"

The Superior Court statistics in Appendix F reveal that despite the re-enacted Fielding Act there were 80 original motor vehicle tort entries in the Superior Court from January through October, 1955. It would appear that the bulk of these cases were commenced in the Superior Court by mistake or inadvertence and that they are subject to dismissal for lack of jurisdiction over the subject matter. Very likely some of them have been discontinued and reinstated in the District Court, but in others the error may go unnoticed until the Statute of Limitations would bar a new action.*

The Fielding Act was re-enacted by St. 1954, Chapter 616. Section 5 provided

> "This act shall take effect on October first of the current year and shall apply only to actions commenced thereafter."

We recommend the following**

DRAFT ACT

Section 5 of Chapter 616 of the acts of 1954 is amended by adding at the end thereof the words "but if such an action is begun by mistake, in the Superior Court, that court may transfer it and the original papers in the case to a district court having original jurisdiction and the action shall then be pending in that court as if originally entered there at the time of transfer when the clerk of the district court receives the paper."

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*There were also 1,891 such Superior Court entries in October, November, and December, 1954. The great majority of these were doubtless commenced by writs dated prior to October 1, 1954, and hence properly returnable in the Superior Court. Since G. L. (Ter. Ed.) c. 231, § 13, permits a maximum of 90 days between the date of the writ and the return day, motor vehicle cases entered in the Superior Court after January 1, 1955, are presumably improperly there.

**While G. L. c. 260, § 32 and Woods v. Houghton, 1 Gray 580, may apply, there seems no reason for abating the writ and starting over again when a simple order of transfer is needed.

Administrative Committee of the District Courts

As usual, the substance of the circular letters of the Administrative Committee of the District Courts, to the justices, clerks and probation officers of those courts, in 1955, are printed in Appendix C, in order to keep the annual information as to the work of those courts and of that committee available for convenient reference of the bench and bar. Practitioners in the District Courts will do well to examine them with care, especially the discussion and forms under the Reciprocal Support Act in the 30th report, 60-68, in 1954 (40 Mass. Law Quart., No. 1, February 1955), and pp. 56-59 of this report; and the discussion of the new act as to procedure for commitment of the mentally ill (C. 637 of 1955), pp. 65-69 of this report.

FRANK J. DONAHUE, *Chairman*,
FREDERIC J. MULDOON, *Vice-Chairman*,
LOUIS S. COX,
JOHN E. FENTON,
JOHN C. LEGGAT,
ELIJAH ADLOW,
FRANK L. RILEY,
CHARLES W. BARTLETT,
LIVINGSTON HALL.

THE INDEX OF THE REPORTS AND LIST OF STATUTES PASSED ON RECOMMENDATION OF THE JUDICATURE COMMISSION AND OF THE JUDICIAL COUNCIL—1919-1951

For the convenience of the legislature and the courts and practicing lawyers we call attention to the fact that we annexed to our 27th report, in 1951, an alphabetical, and chronological, index to the contents of these reports since 1919, with an introductory statement, and also an index of the circular letters of the Administrative Committee of the District Courts. These circulars have been printed in each report since 1951.

Preceding the index is an annotated list of about 150 statutes passed on recommendation of the Judicature Commission and of the Judicial Council since 1919, with references to the reports where the reasons for each statute may be found.

This list of statutes brought down to 1954 numbered 177 with references and is reprinted for convenient reference for the bench and bar in the Massachusetts Law Quarterly for February 1955, Vol. 40, No. 1. References to five more statutes passed in 1955 will be found beginning on p. 5 of this report.

APPENDIX A.

LETTER FROM ALBERT B. WOLFE SUBMITTED THE JUDICIAL COUNCIL IN SUPPORT OF HOUSE 1389 TO PROVIDE FOR A STATUTE OF LIMITATIONS TO PROTECT LAND AGAINST FORMAL DEFECTS OF TITLE AFTER 10 YEARS.

House 1389—to protect recorded titles from formal defects—is prompted in part by study of a book by Paul E. Basye, entitled "Clearing Land Titles," which was published by West Publishing Co. in 1953. It is a unique compendium to the varied efforts of the various states to simplify the ever increasing job of title examination, and to obviate a large volume of relatively unnecessary litigation, and to increase marketability generally in the public interest.

Many of the measures he discusses would perhaps not be appropriate or acceptable in Massachusetts at this time, but the needs he points out (Sec. 1, Sec. 373) are great, and of all the measures he discusses, general curative legislation such as House 1389 seems to me the simplest and safest, and the one which would obviate the most unnecessary litigation at the least risk of injustice.

One cannot read through the summaries of the various curative statutes dealing separately with scores of different specified defects (Chapters 12-21), and note the hundreds of such statutes (albeit few of Mass. are cited), and consider the limited effect of most of them which operate only retrospectively, without being struck by the desirability of more comprehensive treatment operating also prospectively, as would House 1389. Consider, for instance, the New York practice of annually validating acknowledgments. McKinney's Unconsolidated Laws, Sec. 7001. Also consider G. L., c. 184, s. 1, validating titles otherwise invalid on account of alienage of a former owner, and G. L., c. 204, s. 19, validating irregular sales under license, prospectively.

This particular type of general statute Mr. Basye discusses at Sec. 231. He quotes in full on page 338 of that section as "desirable," a somewhat similar Nebraska Statute of 1941, and in a footnote on page 352 cites somewhat similar statutes in fourteen other states. Apparently none use a longer period than ten years.

House 1389 differs from the Nebraska act in three respects. First, it is limited to instruments signed by an owner, instead of including any instrument in any manner purporting to effect title. The latter seems to me unnecessarily broad and a possible invitation to fraud, but I do not think there can be much just complaint to binding owners who sign title instruments and allow them to be recorded and stay unchallenged for ten years, rather than putting innocent grantees or subsequent title holders to the burden of bills for reformation.

The second difference is that House 1389 lists more specifically the types of irregularities being cured, and does not imply that all requirements about execution are cured. The only criticism of the bill that has so far come to my attention is that it does not cover certain other irregularities but the ones selected still seem to me safest and most needed.

The third difference is the addition of the "unless" clause at the end, expressly recognizing a cause of action to have the instrument set aside, by any person

entitled in event of invalidity. This is aimed partly at protecting an innocent subsequent purchaser, if there should be any such, despite the required recording and indexing.

By analogy with the host of other curative statutes, the bill should be constitutional without the "unless" clause, but its inclusion makes the bill in effect a short statute of limitations for the particular cases described, and should support the constitutionality.*

In the words of the Ohio Court, quoted on page 319,

> "Where the title in equity was such that a court of chancery ought to interfere and decree a good legal title, it was within the power of the legislature to confirm the deed, without subjecting an indefinite number to the useless expense of unnecessary litigation."

I think that the bill, if enacted, would be sufficient to enable conveyancers to pass titles notwithstanding the defects described, without waiting for fifty or sixty years or longer before taking the chance as is now usual.

APPENDIX B.

The District Courts
(Other than the Boston Municipal Court)

There are 72 of these courts in addition to the Municipal Court of the City of Boston, and eight of them, besides that court, are in Suffolk County. Their volume of business appears in the table opposite. The history of the discussion of these courts since 1876 appears in the Law Society Journal of February 1945 (also MLQ, May 1945, see also list of reports in 20th Report of the Judicial Council, page 29 and pp. 86 and 92 of the 22nd Report). See also the report of the Committee in 37 Mass. Law Quarterly, No. 4, December 1952. As usual the substance of the semi-annual circular letters of the Administrative Committee are reprinted below, as they contain helpful information for those practising in these courts, and also a continuous history of the courts and of the work of that Committee. Attention is called to the consolidated index of the earlier letters in the 27th Report of the Judicial Council, pp. 57-61.

The volume of business for each court from July 1, 1954 to June 30, 1955, is shown in the table opposite. For the first time, these statistics show the number of trials of the various classes of civil cases in the District Courts (other than the Municipal Court of the City of Boston). There were 100 or more trials of motor vehicle tort cases in 5 of these courts, Malden, Cambridge, Dorchester,

*Cf. Scurlock, "Retroactive Legislation Affecting Interests in Land"—Michigan Legal Studies, 1953.

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DISTRICT COURTS	Civil Writs Entered	Tried	Contract Entered	Tried	Motor Vehicle Tort Entered	Tried	Other Tort Entered	Tried	Summary Process Entered (Ejectment)	Tried	All Other Cases Entered	Tried	Removals to S. C. (Total of All Removals)	
1. Central Worcester	4,338	412	2,022	173	1,704	97	165	18	335	115	112	9	1,028	
2. 1st East. Middlesex, Malden	4,407	364	2,157	88	1,644	134	160	19	319	122	127	1	624	
3. Springfield	3,846	218	2,064	75	1,272	34	137	11	332	95	41	3	763	
4. Roxbury	2,123	371	127	13	532	69	36	5	1,413	281	15	3	134	
5. 3rd East.Middlesex, Cambridge	3,867	442	1,923	137	1,423	164	120	22	379	117	22	2	572	
6. Dorchester	1,254	478	177	29	544	132	67	14	448	298	18	5	150	
7. East Norfolk, Quincy	2,938	264	1,749	94	919	92	69	14	166	62	35	2	363	
8. Southern Essex, Lynn	2,850	322	1,486	78	908	103	120	17	248	98	88	26	498	
9. 3rd Bristol, New Bedford	1,920	300	797	114	741	137	70	17	231	28	81	4	302	
10. Lowell	2,186	206	1,106	49	715	51	72	11	278	88	15	7	239	
11. 2nd Bristol, Fall River	1,360	197	669	68	497	51	64	14	115	56	15	8	224	
12. Lawrence	1,290	191	492	39	553	82	54	11	154	33	37	26	236	
13. Somerville	1,925	275	1,046	13	500	24	91	3	239	229	49	6	255	
14. First Essex, Salem	1,655	175	1,094	72	410	50	53	0	64	38	34	15	254	
15. 2nd East. Middlesex, Waltham	1,598	138	1,013	44	444	33	21	5	110	52	10	4	208	
16. West Roxbury	581	126	106	10	152	13	12	3	298	99	13	1	52	
17. North. Norfolk, Dedham	1,249	229	746	91	372	83	47	13	52	32	32	10	132	
18. Newton	1,392	169	804	64	468	76	56	10	54	17	10	2	196	
19. Brockton	1,545	187	797	54	530	64	47	7	117	54	54	8	207	
20. Hampshire, Northampton	538	48	302	17	177	13	12	2	46	16	1	0	95	
21. 4th East. Middlesex, Woburn	1,213	285	712	173	381	75	28	7	76	27	16	3	175	
22. Chelsea	1,161	266	319	30	508	67	80	8	240	158	14	3	168	
23. East Boston	798	275	123	5	337	57	31	0	254	201	53	12	114	
24. Brighton	490	263	80	29	103	37	15	4	287	193	5	0	25	
25. Central Berkshire, Pittsfield	670	32	460	11	136	5	4	1	38	14	32	1	123	
26. 1st Bristol, Taunton	596	69	317	17	184	26	26	3	50	18	19	5	91	
27. Brookline	1,407	158	862	51	395	63	40	6	87	35	23	3	165	
28. Holyoke	646	101	314	11	167	16	15	0	143	74	7	0	96	
29. No. Cent. Essex, Haverhill	644	120	283	43	224	41	46	11	60	17	31	8	128	
30. South Boston	528	460	25	5	35	11	17	4	433	433	18	7	17	
31. 2nd Plymouth, Hingham	961	100	718	61	192	23	17	3	26	11	8	2	87	
32. Chicopee	261	39	97	3	79	2	5	3	72	28	8	3	44	
33. Fitchburg	585	27	303	7	181	4	26	1	61	15	14	0	112	
34. 1st So. Worcester, Webster	336	34	225	12	59	10	14	1	26	11	12	0	40	
35. 4th Bristol, Attleboro	468	91	303	33	115	36	11	2	32	17	7	3	55	
36. 1st So. Middlesex, Framingham	1,007	183	611	147	300	20	29	3	59	6	8	7	166	
37. Central Middlesex, Concord	511	55	338	15	145	26	8	1	16	13	4	0	58	
38. West. Norfolk, Wrentham	623	70	422	29	140	21	12	0	27	12	22	8	52	
39. Franklin, Greenfield	385	50	250	23	103	15	7	7	22	5	3	0	62	
40. 1st No. Worcester, Gardner	355	11	252	2	72	7	8	1	18	1	5	0	39	
41. East. Essex, Gloucester	491	35	346	17	72	1	6	0	39	9	28	8	59	
42. 1st Barnstable, Barnstable	584	31	448	20	90	3	4	0	21	8	21	0	54	
43. West Hampden, Westfield	239	15	147	6	55	3	6	1	25	4	6	1	37	
44. 1st No. Middlesex, Ayer	225	22	146	9	56	8	4	2	13	3	6	0	18	
45. 4th Plymouth, Wareham	295	15	198	5	69	5	8	1	19	4	1	0	29	
46. 3rd Plymouth, Plymouth	500	38	356	14	95	10	22	3	18	9	9	2	39	
47. 2nd So. Worcester, Blackstone	115	21	69	11	21	4	4	0	13	6	8	0	5	
48. Peabody	392	35	222	6	113	7	24	0	25	21	8	1	69	
49. South. Norfolk, Stoughton	439	89	294	55	107	19	6	2	29	13	3	0	68	
50. 2nd East. Worcester, Clinton	223	22	121	11	73	6	7	1	16	4	6	0	39	
51. Charlestown	516	257	35	11	191	66	42	1	244	178	4	1	86	
52. Leominster	253	11	150	1	84	5	1	0	13	5	5	0	36	
53. Marlborough	339	33	167	7	126	11	5	2	23	13	18	0	58	
54. North Berkshire, No. Adams	200	22	109	3	24	4	3	1	23	9	41	5	19	
55. 3rd So. Worcester, Milford	278	19	138	6	78	8	9	1	6	4	47	0	41	
56. Newburyport	228	40	148	28	52	5	3	2	12	3	13	2	31	
57. Eastern Hampden, Palmer	116	21	76	14	22	0	3	1	12	6	3	0	9	
58. 1st East. Worcester, Westboro	185	22	112	7	58	3	1	1	12	10	2	1	28	
59. West. Worcester, E. Brookfield	212	17	166	7	26	2	3	0	12	7	5	1	11	
60. Natick	390	49	249	28	96	9	3	0	12	9	30	3	47	
61. 2nd Barnstable, Provincetown	264	5	210	3	41	0	1	0	12	2	0	0	37	
62. 2nd Essex, Amesbury	148	13	75	2	47	2	5	2	13	5	8	2	20	
63. 4th Berkshire, Adams	108	30	69	18	27	4	3	1	8	7	1	0	13	
64. So. Berkshire, Gt. Barrington	145	13	104	2	21	5	7	0	10	5	3	1	13	
65. Lee	111	9	60	1	43	0	0	0	8	8	0	0	7	
66. East. Franklin, Orange	57	18	53	16	3	1	1	1	0	0	0	0	2	
67. East. Hampshire, Ware	54	4	34	1	19	3	0	0	1	0	0	0	6	
68. 3rd Essex, Ipswich	50	1	30	0	17	0	0	0	2	1	1	0	8	
69. Winchendon	35	4	28	1	4	0	0	0	3	3	0	0	3	
70. Williamstown	29	14	20	12	7	1	1	0	1	1	0	0	4	
71. Dukes, Edgartown	52	3	47	3	5	0	0	0	0	0	0	0	3	
72. Nantucket	18	3	14	1	1	0	1	0	2	2	0	0	0	
TOTAL	63,798	8,732	32,132	2,355	29,104	2,259	2,095	305	8,072	3,578	1,395	235	9,248	7

...ed	Removals to S. C. (Total of All Removals)	Total Removals of Motor Vehicle Torts to S. C.	Reported to App. Div.	Appealed to S. J. C.	Supplementary Process	Small Claims	Criminal Cases Begun	Criminal Appeals	Drunkenness (Total No. of Complaints)	Automobile Cases (Total)	Operating Under Influence of Intoxicating Liquor	Intoxicating Liquor Cases	Juvenile Cases Under 17 Yrs.	Drunkenness Releases	Net Number Brought Before the Court	Neglected Children	Inquests	Parking Tickets Returned	No. of Insane Commitments
9	1,028	945	8	2	1,602	4,651	15,172	132	4,730	5,221	169	0	463	1,496	3,234	32	1	60,228	992
1	624	542	8	0	995	2,612	6,104	80	925	4,451	122	0	191	436	489	24	1	38,469	73
3	763	656	8	0	1,721	4,969	21,477	39	4,043	15,604	192	10	255	2,274	1,769	37	0	53,902	275
3	134	117	4	2	835	2,613	16,205	304	4,836	8,212	135	10	615	2,775	2,061	95	2	97,176	1
2	572	494	9	2	917	2,194	8,017	124	2,173	4,171	343	3	258	1,007	1,166	14	0	50,083	203
5	150	130	1	0	1,701	2,155	4,540	119	1,356	2,135	82	16	427	932	424	19	0	25,356	0
2	363	298	1	1	782	2,814	4,686	115	1,531	2,071	210	5	250	450	1,081	0	1	4,399	144
26	498	399	6	0	1,055	2,311	4,533	56	1,826	1,404	197	3	166	986	840	26	1	23,605	69
4	302	242	4	1	219	2,882	3,881	121	1,222	916	187	5	133	553	669	0	0	2,091	201
7	239	219	3	0	383	3,060	3,904	40	1,007	1,589	97	7	151	665	342	38	0	11,486	200
8	224	201	0	0	149	1,048	4,499	242	1,718	1,694	153	33	147	1,153	565	0	0	14,357	75
26	236	214	1	0	111	1,128	2,538	28	1,109	1,030	103	14	125	730	379	4	1	12,896	18
6	255	200	2	0	565	1,067	2,959	195	840	949	100	3	85	723	117	3	0	13,824	12
5	254	201	2	0	333	1,154	3,180	157	1,070	1,308	153	0	111	663	407	27	1	4,076	453
4	208	170	2	0	384	1,414	3,592	79	1,035	1,897	138	0	170	599	436	4	3	19,350	503
1	52	46	1	0	409	1,315	3,171	239	719	1,893	69	7	193	504	215	6	0	7,045	0
0	132	109	0	0	494	882	1,486	42	390	833	88	0	55	211	179	0	0	1,826	62
2	196	160	2	0	392	1,010	3,235	27	434	2,429	43	0	41	193	241	0	7	19,324	55
8	207	172	2	1	386	1,103	2,592	103	856	914	98	2	141	209	647	17	0	4,143	46
0	95	81	0	1	86	988	2,756	68	535	1,364	88	1	90	63	472	1	1	7,609	583
3	175	147	1	0	541	1,143	1,643	28	736	679	77	0	112	306	430	2	1	847	14
3	168	126	1	0	536	1,272	3,748	227	1,324	1,120	108	9	195	602	722	18	0	9,946	6
2	114	100	0	0	320	814	2,605	48	702	1,245	32	6	364	443	259	2	0	7,625	3
0	25	25	2	0	348	886	4,483	80	911	2,462	46	2	81	601	310	0	2	28,385	0
1	123	94	0	0	145	1,910	3,932	25	511	2,878	64	1	58	173	338	7	0	12,043	0
5	91	61	1	0	101	733	2,183	41	226	1,069	71	1	59	133	93	0	0	3,657	289
3	165	114	3	0	413	623	2,647	19	251	1,632	36	0	66	81	170	0	1	25,976	15
0	96	71	0	0	140	885	2,486	12	1,172	891	121	12	69	526	646	7	1	0	0
8	128	91	1	0	179	468	1,301	35	570	262	43	2	52	387	183	2	0	1,702	43
7	17	13	0	0	99	488	3,933	86	1,535	1,586	46	15	79	921	614	11	0	10,586	0
2	87	67	2	1	533	1,077	1,689	165	580	639	144	0	131	215	365	3	0	347	25
3	44	40	0	0	74	435	2,371	10	575	1,525	130	9	7	256	319	10	0	8,056	7
0	112	99	1	0	373	919	1,839	43	867	580	67	2	191	272	595	26	0	10,599	11
0	40	23	1	0	65	1,147	3,139	35	446	2,215	104	3	21	208	238	0	1	2,159	14
3	55	40	1	0	364	1,081	1,517	49	225	747	108	3	53	7	218	0	1	152	32
7	166	141	0	0	243	764	2,782	38	591	1,430	116	0	80	58	533	1	0	151	36
0	58	45	0	0	154	540	2,621	24	268	2,082	101	0	79	91	177	1	1	595	174
8	52	48	1	0	186	715	1,821	28	228	1,089	68	1	90	100	128	0	0	0	325
0	62	60	2	0	405	1,158	1,321	9	109	752	51	3	71	33	76	0	0	8,499	12
0	39	29	0	0	259	795	1,776	23	553	865	72	2	43	330	223	0	0	4,884	96
8	59	45	1	0	107	242	1,002	13	392	225	33	8	46	269	123	32	0	3,046	0
0	54	44	0	0	111	866	2,681	59	726	1,080	126	6	63	546	180	1	2	860	3
1	37	31	1	0	66	649	2,259	14	279	1,689	72	1	67	40	239	3	1	2,286	14
0	18	16	0	0	52	388	3,113	50	318	2,365	151	3	47	14	304	8	1	310	16
0	29	23	0	0	66	577	1,428	71	365	625	94	2	54	137	228	0	0	0	14
2	39	23	0	0	136	679	961	33	326	236	88	0	73	117	209	10	1	1,534	9
0	5	3	0	0	16	320	286	7	26	110	7	0	22	9	17	0	0	1,188	3
1	69	51	0	0	95	322	1,178	25	384	569	53	7	26	77	307	0	0	2,319	2
0	68	56	1	0	145	465	1,081	79	157	673	69	0	55	4	153	0	0	112	0
0	39	32	0	0	112	424	1,008	10	144	742	33	0	32	51	93	5	0	751	29
1	86	68	0	0	140	323	3,198	122	1,630	1,009	19	4	112	894	736	7	1	5,769	1
0	36	34	0	0	103	404	749	16	254	260	33	0	56	44	210	0	0	2,470	32
0	58	58	1	0	56	690	563	9	198	262	29	0	37	12	186	3	1	712	14
5	19	12	0	0	43	480	688	19	300	232	30	0	25	63	237	1	2	3,088	0
0	41	36	0	0	141	375	489	10	[illegible]	150	8	0	17	60	24	0	0	1,307	19
2	31	20	1	0	46	630	1,534	27	533	789	68	10	42	365	168	7	0	3,083	3
0	9	7	1	0	45	717	1,609	36	160	1,195	58	12	33	4	156	0	0	615	14
1	28	27	0	0	46	304	1,531	11	99	1,140	38	8	22	54	45	0	0	0	463
1	11	8	2	0	68	445	632	16	188	328	47	0	6	97	91	6	1	0	19
3	47	46	1	0	101	293	2,583	31	172	1,240	53	0	36	28	144	4	0	1,474	3
0	37	24	0	0	77	384	904	11	301	353	54	3	19	210	91	0	0	53	4
2	20	18	0	0	36	230	852	15	447	260	43	1	12	311	136	12	1	1,199	7
0	13	12	2	0	10	118	584	4	144	326	31	0	12	71	73	0	0	519	9
1	13	6	0	0	29	415	619	8	110	392	15	0	4	22	88	1	0	211	3
0	7	6	0	0	26	175	730	9	52	585	29	0	3	15	37	7	0	0	0
0	2	2	0	0	15	141	184	0	54	90	11	1	2	40	14	0	0	0	5
0	6	6	0	0	28	91	86	2	13	46	9	0	2	50	13	0	0	87	8
0	8	8	0	0	19	82	240	2	89	77	31	0	5	41	48	3	0	435	0
0	3	1	0	0	6	84	299	4	77	88	22	0	10	15	62	0	0	5	2
0	4	2	0	0	4	137	432	7	48	276	19	1	7	9	39	0	0	127	0
0	3	1	0	0	12	169	221	0	75	72	14	0	18	4	71	0	0	0	0
0	0	0	0	0	0	35	147	2	37	66	8	0	1	28	9	0	0	7	0
35	9,248	7,756	92	11	20,927	70,877	202,126	4,057	52,917	103,374	5,767	257	6,934	26,066	26,901	547	38	641,021	5,763

Lynn and New Bedford. The percentages of trials reported for the period July 1, 1954 to June 30, 1955 are as follows:

DISTRICT COURT CASES TRIED

Summary Process	Trials in 44% of cases entered.
Motor Vehicle Tort	Trials in 18% of cases not removed.
Other Tort	Trials in 15% of cases entered.
Contracts	Trials in 7% of cases entered.
Other	Trials in 17% of cases entered.
All Cases	Trials in 16% of cases not removed.

The overall percentage of cases in these courts removed to the Superior Court was 14%. For motor vehicle tort cases, which since October 1, 1954 have had to be brought in the District Courts, the percentage of removals was 38%; for all other cases, it was 4%.

The figures for the first full year since the "Fielding" Act was re-enacted in 1954 show a reduction in the number of new motor vehicle tort cases in the Superior Court. The number of such cases fell from a total of 17,540 in the year before its effective date of October 1, 1954, to a total of 16,413 in the year following—a drop of 1,127 cases, or 6% of the volume of motor vehicle tort cases in the Superior Court.

The figures for the Municipal Court of the City of Boston show for the year October 1, 1953 to September 30, 1954, 4,619 motor vehicle tort cases brought, 515 removed, and 4,104 remaining in the court. For the following year, October 1, 1954 to September 30, 1955, 8,343 motor vehicle tort cases were brought in this court, 3,876 were removed to the Superior Court, and 4,467 remained in the court.

Comparative figures for the other District Courts are not available, as they have been compiled only on the basis of the fiscal years ending June 30, 1954 and June 30, 1955. For the year ending June 30, 1954, 14,612 cases were brought in these other courts, 2,599 were removed, and 12,013 remained in the District Courts. For the year ending June 30, 1955, 20,104 motor vehicle tort cases were brought in these courts, 7,756 were removed to the Superior Court, and 12,348 remained in the District Courts.

It is interesting to note that of the 14,442 motor vehicle tort cases removed from the District and Municipal Courts to the Superior Court during the year October 1, 1954 - September 30, 1955, immediately following the re-enactment of the Fielding Act, 7,463 (52%) were removed by the plaintiff; 6,477 (45%) were removed by the defendant; and 499 (3%) were removed by both parties or by the court.

APPENDIX C.

ADMINISTRATIVE COMMITTEE OF THE DISTRICT COURTS

[CIRCULARS IN 1955]

January 24, 1955

TO THE JUSTICES, CLERKS AND PROBATION OFFICERS OF THE DISTRICT COURTS:

We are sending herewith on separate sheet the statistical compilation of the work of the District Courts for the year ending June 30th, 1954. [Reprinted in the 30th report of the Judicial Council.] Previously the statistical compilation has always ended with September 30th of each year but the present change has been made at the request of the Judicial Council to correspond with the period covered by the statistics reported by the Superior Court.

In a comparison of the statistics for the past year with those of the previous year the following changes are to be noted: [Omitted.]

SOME RECENT DECISIONS OF THE SUPREME JUDICIAL COURT

The following cases, of interest to district courts, have been decided by the Supreme Judicial Court since our last circular letter. [Abbreviated.]

Leigh v. Rule, 1954 A. S. 763—Suit to recover deposit under agreement to buy land. Inability of seller to perform excuses, failure of buyer to tender performance.

Tilo Roofing Co. v. Pellerin, 1954 A. S. 849—Evidence as to whether intention that signed writing delivered to agent was effective as a contract or subject to investigation of credit.

Guderviez v. John Hancock Mut. Life Ins. Co., 1954 A. S. 859—Where policy insured death benefit *not* payable while insured in service in time of war, death by automobile accident while on furlough during undeclared Korean War was in service.

Kerr v. Director of Employment Security, 1954 A. S. 947—Unemployment and remuneration under unusual circumstances discussed.

Livingston v. George McArthur & Sons, 1954 A. S. 953—Broker's Commission—What constitutes contract and revocation of authority.

Roberts v. Reynolds, 1954 A. S. 967—This case deals with an employer's liability for negligence, the effect of the workmen's compensation act, assumption of risk, contributory negligence and to whom the workmen's compensation act applies.

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT
G. L. CHAPTER 273A (ACTS OF 1954, CHAPTER 556)

There has been considerable activity in the district courts under this Act particularly in respect to cases transferred to the district courts by the probate courts under the statute. While many questions of procedure have arisen, they have, for the most part, been satisfactorily solved and generally speaking the statute is working well in so far as Massachusetts is the responding state. It is too early yet to comment on the success of the procedure where Massachusetts is the initiating state.

We are advised by the Council of State Governments that Mississippi has now passed an act that is substantially the same as the Uniform Reciprocal Enforcement of Support Act and that this act includes within its text the specific forms to be used by the court in Mississippi with regard to the bill of complaint (petition), the certificate of the court and the testimony of the complainant. This leaves Nevada as the only state not now having an act of this general character.

There are two corrections in the forms which we suggested in our letter of August 12, 1954 which we have called to the attention of most of the clerks and which we repeat herein. The first is in paragraph 4 of the certificate of the justice which appears on page 8 of our letter of August 12th last. Paragraph 4 should be amended so that it reads as follows:

"4. That in the opinion of the undersigned justice the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that such petition should be dealt with according to law."

This change makes the petition and certificate of the justice conform almost exactly to the uniform forms suggested by the Council of State Governments. It is possible that the responding state may require more than one certified copy of the petition or some copy of the Massachusetts statute but, if so, these copies can readily be furnished by the clerk. Another change should be made in the suggested forms contained in our circular letter of August last in the order of notice which appears on page 9 of that letter. The order at the bottom of this notice which is headed 'Detach and Serve Above' should be stricken out and the following return of the officer substituted:

"I have served the foregoing order as therein required.

.....

....., ss. ..... 19..... Then personally appeared ..... and made oath that the above return by h subscribed is true.

Before me,

..... Notary Public"

In addition to the forms suggested in our last circular letter we suggest the following:

CAPIAS FOR RESPONDENT
CONSIDERED IN CONTEMPT
COMMONWEALTH OF MASSACHUSETTS

....., ss. .....Court of

.....

To the Sheriffs of our several Counties, or their Deputies, or any Constable of any City or Town within our said Commonwealth:

Greeting:

WHEREAS ..... of ..... in the County of ....., respondent upon a petition filed in the ..... District Court of ..... by ..... of ..... in the State of ..... petitioner, under the provisions of G. L. Chap. 273A (Uniform Reciprocal Enforcement of Support Act),

has been duly summonsed to appear before the .....
District Court of ..... at .....
in said County on the ..... day of
..... A. D. 19..... to show cause why he should not be ordered to furnish support for dependents, and by continuance on the ..... day of .....
A. D. 19..... but hath neglected to appear, and it appearing to the Court by inspection of the record that said respondent .....
..... is now considered in contempt, it is ordered that a capias issue to bring him before our said Court to answer therefor.

You are hereby commanded forthwith to apprehend the body of the said respondent .....
(if he may be found in your precinct) and bring him without delay before our said Court, to answer for said alleged contempt, in accordance with the provisions of said Chapter 273A of our General Laws, and the acts amendatory thereof and supplementary thereto.

Hereof, fail not, and make due return of this precept with your doings herein forthwith.

WITNESS, ... ESQUIRE, JUSTICE, AT .....,
this ..... day of ..... in the year of our Lord one thousand nine hundred and .....

..... Ass't. Clerk.

An arrest on this capias shall not be made after sunset unless it is specially authorized for cause.

MITTIMUS FOR RESPONDENT ADJUDGED IN CONTEMPT

COMMONWEALTH OF MASSACHUSETTS

..... ss. .....District Court of.....

To the Sheriff of our County of ....., or his Deputies, or any Constable of the County of ..... and the Keeper of the Jail in said County:

Greeting:

WHEREAS ..... of .....
in the County of ....., respondent, on the .....
..... day of ..... A. D. 19....., after inquiry by a justice of the ..... District Court of ..... ordered to pay to the probation officer of said Court the sum of ..... dollars on ..... day of each week ..... beginning with the ..... day of ..... 19.....
and whereas said respondent has failed and neglected to comply with said order, and said respondent has been brought before said Court, and it now appearing to said Court that the said .....,
respondent, now owes under said decree the sum of .....
dollars which he neglects and refuses to pay; the said .....

..... respondent was adjudged guilty of contempt of said Court, and was sentenced by said Court to confinement in our common jail for the term of ..... days from and after the date of these presents.

We command you, therefore, the said Sheriff, Deputies, Constables, and each of you, forthwith to convey and deliver into the custody of the Keeper of said jail the body of ..... respondent.

And you the said Keeper are hereby commanded to receive the said ...., respondent, and him there safely keep until the expiration of said ..... days, unless he be sooner discharged .... by further order of the Court.

Hereof fail not.

Witness, ..., Esquire, Justice of the ..... District Court of ....., this ..... day of ..... in the year of our Lord one thousand nine hundred and fifty-.....

..... Ass't. Clerk.

The appropriate return of the officer should be made on the back of each of these forms.

THE ACT AUTHORIZING JUSTICES OF THE DISTRICT COURTS TO SIT IN THE SUPERIOR COURT ON MOTOR VEHICLE TORT ACTIONS

(G. L. Chap. 212, s. 14B inserted by Chap. 556 of the Acts of 1954)

As this act also authorized justices of the district courts to sit on the criminal side of the Superior Court in the so-called misdemeanor session, the Committee on July 8, 1954 and August 18, 1954 furnished the Chief Justice a list of district court judges available for such service pursuant to the provisions of the statute. Also in pursuance of the terms of the statute, the Committee furnished to the Chief Justice of the Superior Court an additional list, effective November 8, 1954, of twelve other justices of the district courts available at the request of the Chief Justice for sitting in the Superior Court at the trial or disposition of motor vehicle tort actions as well as at the trial, in the criminal session, of the misdemeanors described in the act. Up to this time we have not been advised that any justice of the district courts has been called for service in the trial of motor vehicle tort actions although the use of district court judges in the misdemeanor session of the criminal court has been continued to the same general extent as under the previous statute.

CARE AND PROTECTION OF CHILDREN

(G. L. Chap. 119, s. 1-39 inserted by Chap. 646 of the Acts of 1954)

Under date of November first we sent to all the courts our analysis of this statute, having previously sent to all the courts mimeographed copies of forms to be used under this statute. Since that time we have had a conference with officials of the Society for Prevention of Cruelty to Children and the Department of Public Welfare. The Department requests that in so far as it is possible when notice is given to it under the statute the age and color of the child be set out in

the notice. The reason for this request is that the Department can then send to the hearing the appropriate agent. It is suggested that the Department be contacted under Section 23E of the statute in cases where the child has been physically abandoned and the other conditions of said Section 23E exist. It was also suggested at this conference that some written authority be given to the person appointed by the court to make a report of the conditions affecting the child under Section 24 of the Chapter. Accordingly, we suggest the following form:

COMMONWEALTH OF MASSACHUSETTS

....., ss. .....District Court

of .....

Juvenile Session

Petitioner under G. L. Chap. 119, s. 1-39.

Child — Children

To ..... of .....

Pursuant to the provisions of G. L. Chapter 119, Section 24 you are hereby appointed to make an investigation into the conditions affecting the aforesaid child/children and to make a report under oath to the court of such investigation.

.....

Justice of said Court

EXCLUSIVE ORIGINAL JURISDICTION OF MOTOR VEHICLE TORT ACTIONS ACTS OF 1954, CHAPTER 616

One of the main purposes for the passage of this act was to relieve the congestion in the superior court. Our present observation is that plaintiffs are removing actions under this act in about the same percentage that existed when the so-called Fielding Act was in effect. Having in mind that this letter may come to the attention of some who will not receive the report of the Judicial Council, we wish to call attention to a portion of that document which appears in its current report. It is there stated that only 1730 cases were tried through with a jury to a verdict in the year 1953-1954 and that in almost half of those, 822, the plaintiff recovered nothing; that in 95 cases the verdicts for the plaintiff were for less than $200; and that in 169, such verdicts were between $200 and $500. Out of 1730 verdicts, in 1086, more than half, the plaintiff who entered the case received nothing or less than $500 at an expense to the public of more than $500 a day. The query was propounded why those 1086 cases should not be tried in the district court more promptly, at less public expense, and with at least as much chance of recovery by the plaintiff if he was entitled to anything at all.

As was said in our last letter we are particularly anxious to demonstrate to the Legislature and the members of the bar and public that this act can be successfully administered to the end that it may reduce to a considerable measure the congestion in the superior court.

During the past calendar year we have visited practically all of the district courts and as always have found the various officials cordial and cooperative.

FRANK L. RILEY, *Chairman*
KENNETH L. NASH ERNEST E. HOBSON
LEO H. LEARY ARTHUR L. ENO

November 1, 1955

TO THE JUSTICES, CLERKS AND PROBATION OFFICERS OF THE DISTRICT COURTS:

The unusually long session of the Legislature has delayed this circular letter which we are accustomed to issue after the prorogation of that body.

Among the Acts of 1955 that may affect practice and procedure in the District Courts are the following:

Chap. 91. Penalties for excessive loads on bridges.

Chap. 112. Penalty for an assault by dangerous weapon.

Chap. 120. "An Act relating to priority of emergency calls on party line telephones"—offenses and penalties.

Chap. 125. "An Act relative to the admissibility in evidence of business and public records." The present law is amended so that original business and public records may be destroyed after having been micro-filmed, etc., unless created by a person other than the holder.

Chap. 131. This Act clarifies and removes trial justice provisions in laws relating to election inquests and certain criminal trials and proceedings.

Chap. 133. Makes persons obtaining services, as well as money or property, by the drawing, etc., of fraudulent checks, drafts or orders, guilty of larceny.

Chap. 152. Provides for a fine of not less than $10 nor more than $50 for the storage or distribution for purposes of public exhibition and all public exhibitions of thirty-five millimeter nitrate motion picture film—takes effect January 1, 1956.

Chap. 158. "An Act relative to venue in the district courts." Providing that actions of tort arising out of the ownership, use, etc., of motor vehicles or trailers, shall be brought in a district court within the judicial district of which one of the parties lives, or has a usual place of business, or in any district court the judicial district of which adjoins and is in the same county as the judicial district in which the defendant lives or has a usual place of business; provided that if one of the parties to any such action lives or has a usual place of business in Suffolk County such action may be brought in the Municipal Court of the City of Boston.

Chap. 160. This Act is entitled "An Act to provide for the return of stolen weapons to lawful owners." The former Section 10 of Chapter 269, General Laws, provided for confiscation. This Act provides if lost or was stolen from a person lawfully in possession.

Chap. 180. This Act is entitled "An Act relative to the payment of minimum wages on public works projects." It strikes out the last sentence of Section 27 of G. L. Chapter 149, and provides that whoever shall pay less than the rate or rates of wages on public works projects to any person performing work within classifications may be punished by a fine of not less than $100 or more than $500. The rest of said section is not changed.

Chap. 189. Clarifies the right to arrest for violations of certain aeronautical laws and regulations. It should be carefully read to obtain its full import. Approved March 21.

Chap. 190. Penalty for interference with sealers of weights and measures.

Chap. 196. Service of process in certain cases arising from the operation of trailers within the Commonwealth by non-residents, the service being the same as is provided for in cases arising from the operation of motor vehicles within the Commonwealth by non-residents.

Chap. 204. Unlawful wearing of official uniforms. It strikes out Section 99 of Chapter 33, General Laws, as appearing in Section 1 of Chapter 590 of the Acts of 1954, and inserts a new section 99. It should be read to be thoroughly understood.

Chap. 226. "An Act relative to further stay of judgment and execution in actions of summary process." It provides that until June 30, 1956, a stay or successive stays of judgment and execution may be granted under sections nine to thirteen, inclusive, of chapter two hundred and thirty-nine of the General Laws, for a period not exceeding nine months or for periods not exceeding nine months in the aggregate in cases where the premises are located in a city or town where rent control is in effect, and for a period not exceeding four months or for periods not exceeding four months in the aggregate in cases where the premises are located in a city or town where rent control is not in effect. As formerly, it provides that a stay of judgment and execution in the case of premises occupied by an employee of a farmer conditioned upon his employment by such farmer and which employment has been legally terminated, shall not be granted for a longer period than two months, in the aggregate.

Chap. 235. "An Act to extend the time for commencing actions for motor vehicle torts." It provides that actions of tort for bodily injuries or for death, the payment of judgments in which is required to be secured by chapter ninety, may be commenced within two years next after the cause of action accrues in cases where the person against whom the action is to be brought, or the insurer, has been notified in writing, by registered mail, of the claim within one year next after the cause of action accrues and an averment to that effect is set forth in the declaration. It takes effect on January 1, 1956, and applies only to injuries or accidents occurring on or after said date.

Chap. 244. "An Act providing for increasing bail fees in certain cases." It provides that when an arrest is made and bail taken between the hours of twelve midnight and six o'clock in the morning the maximum fee shall be $5.00 for the first charge and $3.00 for each additional charge.

Chap. 255. This Act amends Section 2 of 136 of G. L., so that dancing on the Lord's Day at celebrations of a religious custom or ritual are permitted if no charge is made for being present or for dancing.

Chap. 269. "An Act relative to the burden of proof in certain prosecutions for trespass." Adds new Section 120A to Chapter 266, G. L., that in prosecution for crime of trespass by parking a motor vehicle upon a private way or upon improved or enclosed land, proof that the defendant was the registered owner shall be prima facie evidence that the defendant was the person who parked.

Chap. 283. Act relative to the coverage of motor vehicles and trailers under compulsory motor vehicle liability policies or bonds in case of death of the owners and applies to all actions of tort arising out of the operation of motor vehicles

not prosecuted to final judgment or discharge. Emergency Act approved April 15.

Chap. 314. "An Act Relative to the Operation of Motor Vehicles by Non-Residents." It provides that a non-resident who holds a license to operate motor vehicles under the laws where he resides may operate without a license from the registrar *any private passenger motor vehicle* of a type which he is licensed to operate under said license duly registered in this commonwealth or in any state or country, subject to certain provisions. The law formerly permitted such a non-resident driver to operate such motor vehicles registered in this commonwealth or in the state or country in which he resided.

Chap. 386. "An Act further relating to the non-criminal disposition of parking violations." It makes some very important changes in the procedure provided for in Section 20A, Chapter 90 of the G. L. It should be carefully read. Approved May 26, later amended by Chapter 751 hereinafter referred to.

Chap. 424. This Act authorizes and directs the Department of Public Health to establish an alcoholic clinic, as defined in Section 4A of Chapter 111, G. L., in Lawrence.

Chap. 428. Same in Springfield.

Chap. 452. Provides all fines and penalties for violations of rules and regulations made by the Commissioner of Airport Management, under Section 50D of Chapter 90, G. L., shall be accounted for and forwarded to the Commissioner to be credited to the general fund of the Commonwealth. Clerks of Courts with airports located in their judicial districts should bear this chapter in mind when remitting fines and penalties.

Chap. 458. Exempts certain disabled persons from certain motor vehicle parking fees and penalties.

Chap. 469. "An Act relative to labelling of receptacles containing benzol, carbon tetrachloride, and other harmful substances." Amends Sections 142A to 142G, Chapter 149, G. L.

Chap. 472. Provides that no person shall sell, offer for sale, or supply others with any embalming fluid, or any substitute therefor, which contains more than five-tenths of one milligram of arsenic per litre, and provides that a violation of the Act shall be punished by a fine of $1,000 or by imprisonment for one year, or both.

Chap. 483. Increases the radius within which certain farm vehicles may be operated under a general distinguishing number or mark signed by the Registrar of Motor Vehicles.

Chap. 488. "An Act to set the expiration dates of licenses to operate motor vehicles and to fix the fees." Effective July 1, 1957 and applies to all operator's licenses and renewals issued on or after said date.

Chap. 491. Provides that railroad corporations shall equip with proper lights or other approved or commonly used devices certain switch stands . . . a fine of $5.00 for each unreasonable failure.

Chap. 503. Regulates hours during which certain children may engage in street trades.

Chap. 507. Relative to licenses to operate motor vehicles issued to persons serving in the armed forces.

Chap. 573. For the establishment by the Division of Youth Service of a place of custody in the County of Hampden.

Chap. 609. "An Act relating to the detention of wayward and delinquent children and juvenile offenders." Should be carefully read.

Chap. 610. Relative to the illegal possession of harmful drugs and reporting drug intoxication to the Department of Public Health.

Chap. 637. This Act is later fully discussed.

Chap. 645. Relative to the rights of certain county employees. Among other things, it provides review by a district court of the action of the appointing authority and of the board in discharging an employee. Approved August 9, as an Emergency Act.

Chap. 647. Relative to the revocation of hunting, fishing and trapping licenses. Approved August 9, as an Emergency Act.

Chap. 653. Authorizes the Massachusetts Turnpike Authority to establish penalties for violation of rules and regulations and provides for the regulation of traffic.

Chap. 658. Accepts retrocession by U. S. to Mass. of concurrent jurisdiction over certain land in the vicinity of Fort Devens. It removes all question as to the right of the Courts of Mass. to take jurisdiction of violations of law committed on certain highways in the vicinity of Fort Devens. Approved and in effect August 10.

Chap. 674. To permit judgment in actions of contract in which there is no dispute of fact. It re-writes Sections 59 and 59A of Chapter 231, G. L. [For reasons, see 30th Report of Judicial Council.]

Chap. 683. This Act adds Clause 44 to G. L. Chapter 4, Section 7. "Registered mail," when used with reference to the sending of notice or of any article having no intrinsic value shall include certified mail. Approved August 18, as an Emergency Act.

Chap. 686. In effect provides that the amount of court orders for the support of the wife, child or children of a recipient of a pension or annuity or retirement allowance under G. L. Chapter 32, who has left the Commonwealth and resides without the United States, shall be deducted and paid to the person or persons, board or officer designated by the court order.

Chap. 687. "An Act providing for the entry of the Commonwealth into compacts with any other of the States relative to the supervision, care and assistance to juveniles." A very long Act and should be carefully read.

Chap. 697 provides that the operation of "debt pooling plans" is deemed to be the practice of law and any person not being a member of the bar who shall furnish or offer to furnish advice or services in connection therewith may be punished by a fine of not more than $500, imprisonment for not more than six months, or both. Approved August 22.

Chap. 718 expands the definition of "harmful" drug and is an emergency Act approved August 25.

Chap. 736 changes the permissible load limits of motor vehicles on public ways.

Chap. 742 approved September 9 with an emergency preamble exempts motion pictures, radio and television from certain approvals required for Lord's Day observance.

Chap. 751 with an emergency preamble, approved September 10, amends Section 1 of Chapter 386 [see above] by striking out the last sentence and inserting, "No other form of notice, except as provided in this section, shall be given to the offender."

Chap. 757 changes milk standards, licensing and containers.

Chap. 763 provides mandatory prison sentences for certain sex crimes, and should be carefully read.

Chap. 770, relative to the penal and reformatory institutions, became effective October 20, 1955. It is a long Act which should be carefully read. Section 11 strikes out Chapter 125 of the General Laws and inserts a new Chapter 125 which by Section 1 changes the designation of the correctional institutions and consequently mittimi accompanying persons sentenced by the district courts to these institutions should bear the title of the institutions designated in said Section 1.

Chap. 781 increases the time from six to ten years within which indictments for various types of robberies and conspiracy to commit the same may be found.

COMMITMENT OF THE MENTALLY ILL

Chapter 637 makes radical changes in the procedures for the commitment of the mentally ill, particularly with respect to what is now termed "prolonged judicial commitment" and should be carefully studied by all justices and special justices. The Department of Mental Health has been advised by the Attorney General's Office that this Act becomes effective November 2, 1955. Before that time it is expected that the Department will send new blanks to the courts covering commitments and other procedures.

By Section 1, Section 1 of Chapter 123, G. L., is amended by adding:

"'Mentally ill' person, for the purpose of involuntary commitment to a mental hospital or school under the provisions of this chapter, shall mean a person subject to a disease, psychosis, psychoneurosis or character disorder which renders him so deficient in judgment or emotional control that he is in danger of causing physical harm to himself or to others, or the wanton destruction of valuable property, or is likely to conduct himself in a manner which clearly violates the established laws, ordinances, conventions or morals of the community.

The terms 'mentally ill' and 'mental illness' shall have the same meaning as the terms 'insane' and 'insanity', respectively, as now or formerly used in this chapter and in rules and regulations of the department, but a finding that a person is mentally ill for purposes of commitment to a mental hospital or school shall not per se import a finding of civil incompetency or of criminal irresponsibility.

'Mentally deficient' person, a person whose intellectual functioning has been abnormally retarded, or has demonstrably failed, the deficiency being mani-

fested by psychological signs. 'Mentally deficient' shall have the same meaning as the term 'feebleminded' as now or formerly used in this chapter."

One of the purposes of this Act is to substitute the words "mentally ill" and "mental illness" for "insane" and "insanity" and "mentally deficient" for "feebleminded" wherever they appear in G. L. C. 123.

For example, Section 2 of Chapter 637 makes one of these amendments in Section 10 of Chapter 123.

Section 3 relates to inquiries and investigations relating to the cause of mental illness, and so forth, by the Department.

Section 4 makes certain amendments in G. L. Chapter 123 in reference to school clinics.

Section 5 amends G. L. Chapter 123, Section 20, relating to transfers from hospitals and schools under the supervision of the Department. The district courts are concerned with this section only in cases where the Commissioner of Mental Health desires to transfer a patient from a state hospital to the state hospital division at Bridgewater. In such cases the patient has a right to a hearing in court in regard to such transfer.

Section 6 places certain school departments under the supervision of the Department of Mental Health.

Section 7 amends G. L. Chapter 123, Section 50, by substituting the words "mentally ill" for the word "insane."

Section 8 of the Act makes the most pronounced changes in procedure respecting the commitment of the mentally ill. It strikes out the present Section 51 of G. L. Chapter 123 and substitutes the following:

"No person shall be committed to any institution for the mentally ill designated under or described in section ten, except the Walter E. Fernald state school, the Belchertown state school, the Myles Standish state school and the Wrentham state school, unless there has been filed with the court a certificate or certificates in accordance with Section 53 certifying to the mental illness of such person by two properly qualified physicians, nor without an order therefor, signed by a judge designated in Section fifty, stating that he finds that the person committed is mentally ill and is a proper subject for treatment in a hospital for the mentally ill, and either that said person has been an inhabitant of the commonwealth for the six months immediately preceding such finding, or that provision satisfactory to the department has been made for his maintenance, or that by reason of mental illness he would be dangerous if at large. The order of commitment shall also authorize the custody of the mentally ill person either at the institution first named, or at any other institution under the control of the department to which he may be properly transferred.

Upon receipt of an application for commitment the court shall cause written notice to be personally served upon the person named therein informing the said person of the application for commitment and of his right to a hearing at which he can be present and be represented by counsel. A copy of this notice shall be mailed to the nearest relative or guardian of the person served. The person served shall be allowed forty-eight hours in which to request a hearing, and further time, not less than seventy-two hours, if desired for the

preparation of his case. The court may at its discretion hold a private hearing at a place convenient for the person served. If the person does not request a hearing, the court may order commitment on the application, medical certification, and any other evidence it may require. In all cases it shall certify in what place the mentally ill person resided at the time of his commitment; or if the commitment is ordered by a court under section one hundred or one hundred and one, the court shall certify in what place the mentally ill person resided or was at the time of the arrest upon the charge for which he was held to answer before such court. Such certificate shall, for the purposes of section fifty, be conclusive evidence of the residence of the person committed."

In our opinion judges should make no commitments under this section except in unusual instances unless application for prolonged judicial commitment has been made after commitment for observation has been made under G. L. Chapter 123, Section 77. In the interests of clarity we are here setting out Section 14 of the Act which amends G. L. Chapter 123, Section 77 by striking out the present section and providing as follows:

"If a person is found by two physicians qualified as provided in section fifty-three to be in such mental condition that his temporary commitment to a mental institution is necessary for his proper care and observation, he may be committed by any judge mentioned in section fifty for forty days' observation and treatment in a state mental hospital, the McLean Hospital, or, in case such person is eligible for admission thereto, in a United States government institution, the person having charge of which is licensed under section thirty-four A. Within forty days after such person has been received at the hospital the superintendent or manager shall discharge the person if he is no longer in need of treatment, and shall notify the judge who committed him of such action. If, however, the superintendent or manager determines within said forty-day period that the person is in need of further treatment, he shall forthwith cause application to be made for prolonged judicial commitment under section fifty-one. Notice to the patient and his relative shall thereupon be given in accordance with section fifty-one.

During the pendency of such application for prolonged commitment, the person may be detained at the institution."

While the preliminary procedure for commitments for observation remains essentially the same, it will be noted that Section 77 as re-written is described as a temporary commitment and that the period within which the superintendent or manager of the hospital shall act has been changed from thirty days to forty days although the period of observation for which the commitment is made still remains forty days. Under the new Section 77 the superintendent or manager of the hospital shall discharge the person if he is no longer in need of treatment and notify the judge who committed him of such action. Under the old Section 77 the superintendent or manager shall discharge the patient if he is not insane with certain recommendations or if he is insane, report the patient's mental condition to the judge with the recommendation that he be committed as an insane person or discharged to the care of his guardian, relatives or friends if he is harmless and can be properly cared for by them. Within the said forty days the committing judge may authorize discharge as aforesaid or he may

commit the person to any institution for the insane as aforesaid if in his opinion such commitment is necessary. This procedure is what has commonly been known as commitment from observation. Commitments from observation are entirely done away with by Section 77 as amended which provides that if the superintendent or manager determines within said forty day period that the person is in need of further treatment, he shall forthwith cause application to be made for prolonged judicial commitment under Section 51. It further provides that notice to the patient and his relative shall thereupon be given in accordance with Section 51 and that during the pendency of such application for prolonged commitment the person may be detained at the institution. The Act does not specify to whom the application for prolonged judicial commitment under Section 51 must be made but it would seem that under G. L. Chapter 123, Section 50, which has not been amended by the Act, this application could be made to any justice of a district court except the Municipal Court of the City of Boston within the county in which the state hospital is situated as the person under temporary commitment would then be residing or being in said county. In view of the fact that Section 77 provides that during the pendency of such application for prolonged commitment the person may be detained at the institution and that under Section 51 the court may at its discretion hold a private hearing at a place convenient for the person served it would seem likely that the superintendent or manager of a state hospital would make applications for commitments under Section 51 to the court in whose jurisdiction the hospital is situated. If a hearing is requested, it would seem much more convenient and undoubtedly in the best interests of all concerned to hold the hearing at the hospital in which the person has been detained. It would also seem likely that in Suffolk County the hospital authorities would make application for prolonged commitments to the probate court of that county which court at present handles almost exclusively the commitments of the mentally ill.

Of the sections that have been passed over in discussing Sections 8 and 14 of the new Act, Section 9 increases the fee of the examining physicians under Section 52 of G. L. Chapter 123.

Section 10 requires the Department to furnish annually to the courts a list of diplomates in psychiatry of the American Board of Psychiatry and Neurology, Incorporated for the guidance of the courts in selecting physicians for examinations.

Sections 11 and 12 substitute the words "mentally ill" for the word "insane" in Sections 54 and 55 of G. L. Chapter 123 and Section 13 repeals Sections 57, 58, 59, 60 and 61 of G. L. Chapter 123 as appearing in the Tercentenary Edition, which relate to jury trials.

Section 15 strikes out Section 86 of G. L. Chapter 123 and inserts a new section. It relates to voluntary admissions and does not concern the courts unless application for judicial commitment is made under Section 51. If such application is made, of course, the procedure set out in the amended Section 51 will be followed by the court.

A copy of the foregoing observations in reference to this Chapter was mailed to all of the justices and special justices on October 26, 1955.

Courts within whose jurisdiction state hospitals are located can anticipate a considerable increase in their work by reason of this Act. It will be noted that there is no specific provision for payment for services and expenses in carrying out various provisions of this statute. Accordingly, we can only look to Sections 71, 73 and 74 of G. L. Chapter 123 as authority for the incurring of such expense.

RECENT DECISIONS OF THE SUPREME JUDICIAL COURT

The attention of the judges and clerks is called to the following decisions handed down by the Supreme Judicial Court since our last circular letter. [Abbreviated.]

Warren v. Howe, 1955 A. S. 71. A rear end collision case.

Crown Shade & Screen Co. v. Walter Karlburg et al., 1955 A. S. 91, deals with conditional sale and the recording of a contract of conditional sale under G. L., c. 184, sec. 13, as appearing in St. 1937, c. 245, sec. 1, as amended by St. 1943, c. 52, sec. 1.

Alden v. Norwood Arena, Inc., 1955 A. S. 137, contains a good discussion of the duty owed to invitees by one who operates a place of amusement and to warn them of dangers not obvious. The court says it is of the opinion that the defendant could have been found negligent because he did not warn patrons of danger of wheels flying off of racing motor vehicles.

Flynn v. Hurley, 1955 A. S. 185, deals with gross negligence and operator of automobile falling asleep. The court states that "to the extent that the case of Blood v. Adams, 269 Mass. 480, is authority for the proposition that merely falling asleep at the wheel is evidence of gross negligence we are not disposed to follow it. We prefer the rule enunciated in Carvalho v. Oliveria (305 Mass. 304, 305-306)." The court states that it is possible that sleep may sometimes overtake its victim unawares and it thinks it would be going too far to say that falling asleep, without more, is evidence of gross negligence.

Lieberman v. Gulliksen Mfg. Co., 1055 A. S. 337. Sale, warranty and notice under G. L., c. 106, sec. 38.

Croteau et al. v. Lowinski, 1955 A. S. 343. The declaration alleged violation of law in parking truck without lights and not negligence. G. L., c. 90, sec. 7, provides that every automobile operated during the period from one-half hour after sunset to one-half hour before sunrise shall display certain described lights, but that an automobile need display no lights when parked within the limits of a way in a space in which unlighted parking is permitted by the rules or regulations of the board or officer having control of such way. An ordinance of Chicopee provided that parking at night without lights is permitted on all streets. Held that the ordinance supplemented and did not contradict G. L., c. 90, sec. 7, and there was no violation of law.

Commonwealth v. Renfrew et al., 1955 A. S. Defendants charged with neglecting to cause their minor child to attend school as required by G. L., c. 76, sec. 1, as appearing in St. 1939, c. 461, sec. 3, as amended, said minor having failed during each of the said periods to attend school for seven day sessions or fourteen half day sessions within a period of six months, as set forth in G. L., c. 76, sec. 2, as amended by St. 1947, c. 241, sec. 1. Defendants contended statute

not violated, as they were giving the child proper instruction at home. Held that home education without the prior approval of the superintendent or committee was not a compliance with the statute and did not bar prosecution.

Iandoli v. Donnelly et als., 1955 A. S. 557. The billboard of defendants, on a roof, fell and damaged automobile. On the facts, held that it could have been found that billboard was subjected to a wind which, though high, was no higher than ought to have been anticipated and guarded against; that it blew down was some evidence of some defect in its construction; that proof of the exact nature of the defect was not required.

Clark & White, Inc. v. Fitzgerald et als., 1955 A. S. 559. Conditional sales contract, held that where a contract provided that charges and expenses, in addition to those authorized by Section 13A of Chapter 255, G. L., could be deducted from the surplus due the buyer, the contract did not satisfy Section 13A and the plaintiff lost its security title.

Cousins v. Cummings, Admx., 1955 A. S. 613. Plaintiff's horse was being driven along a "dirt gutter" on the rider's right side of a way. Defendant's intestate was operating his automobile with a trailer attached in the same direction. On the trailer were boards sticking out "maybe three feet" from its right hand side. As trailer passed the horse the boards struck and injured it. Road was sufficiently wide for vehicles to pass each other and there was no other traffic in the vicinity. Held that although the mere occurrence of the collision was not evidence of his negligence, his acts, unexplained, warranted an inference based on common experience that in the circumstances he would not have struck the horse if he had been careful.

Commonwealth v. Houston, 1955 A. S. 655. Homicide. Self defense. Contains helpful statement respecting the right of one to defend himself with a dangerous weapon; several interesting cases cited.

Brattle Films, Inc. v. Commissioner of Public Safety et al., 1955 A. S. 809. A very important case. G. L., c. 136, sec. 4, provides that the mayor of a city or the selectmen of a town may, upon written application describing the proposed entertainment, grant, upon such terms or conditions as he or they may prescribe, a license to hold on the Lord's Day a public entertainment, in keeping with the character of the day and not inconsistent with its due observance, provided, that no such license shall have effect unless the proposed entertainment shall have been approved in writing by the commissioner of public safety as being in keeping with the character of the day and not inconsistent with its due observance. The court holds that this section is void on its face as a prior restraint on the freedom of speech and of the press, guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

Commonwealth v. James A. Ronchette, 1955 A. S. 841. Defendant charged with breaking and entering at night a dwelling with intent to commit a felony. The court says the Commonwealth was required to prove the specific intent with which the break was committed; a finding of intent usually is based upon what reasonably is to be inferred from conduct; that when a person, by the use of force, enters a dwelling house in the middle of the night, it may ordinarily be presumed, in the absence of evidence to the contrary, that his intent is to steal.

AMENDMENT OF REQUIREMENT NO. V

This requirement, effective January 1, 1943, provides,

"No special justice shall be assigned to hear or try a motor tort case if he shall be directly or indirectly retained, employed or practice as an attorney in motor tort cases."

When this requirement was promulgated nearly thirteen years ago, actions of motor tort under the small claims procedure were not specifically mentioned therein. Since that time, however, the amount for which small claims actions may be brought has been increased and there has been a considerable increase in the number of motor vehicle tort actions brought under the small claims procedure in many of which counsel for the plaintiff or defendant have also represented insurance companies. Accordingly, the Committee has voted to amend this requirement, effective November 15, 1955, by inserting after the word "case" in the second line the words "including those brought under the small claims procedure" so that the requirement as amended shall be and read as follows:

"No special justice shall be assigned to hear or try a motor tort case, including those brought under the small claims procedure, if he shall be directly or indirectly retained, employed or practice as an attorney in motor tort cases."

INFORMATION ON MOTOR VEHICLE COMPLAINTS

The Registry of Motor Vehicles has written that in the administration of the point system applying to compulsory motor vehicle insurance some of the essential information does not always appear upon the abstract of motor vehicle criminal cases sent to the Registrar by the clerks of the various courts. Apparently this occurs most frequently when the defendant in the criminal case is not the owner of the motor vehicle involved and, according to the Registrar, he is required to assess points against not only the operator but also against the owner of the vehicle.

The Registry writes us that they have had very good cooperation with the clerks of courts but that sometimes a clerk is unable to furnish all the information required on the printed abstract because he did not have all of this information from the complaining officer. Some of the courts, including the Municipal Court of the City of Boston, have adopted printed forms which they require the complaining officer to fill out when he makes an application for a complaint in motor vehicle cases. This application contains all the information that is required later to be contained in the abstract sent to the Registry of Motor Vehicles. At this time we do not feel it necessary, by reason of the difference in conditions in the various courts, to require the filling out by the complaining officer of these formal applications for process. We request, however, that the clerks when receiving these complaints obtain from the officer not only the usual information about the defendant but also the name of the owner of the motor vehicle involved and its registration number. If he does this, he will then be able to fill out the abstract which is required to be sent to the Registrar.

We trust this procedure will be satisfactory to the Registrar who, as we have said, has expressed his appreciation for the cooperation he is presently receiving from the clerks of courts.

We are enclosing herewith statistics of the district courts for the year ending June 30, 1955 as reported by the clerks of said courts. Until last year these statistics covered the period ending September 30th of each year and were enclosed with our January circular letter. These statistics are in much more detail than ever before reported which detail has been requested by the Judicial Council. . . .

FRANK L. RILEY, *Chairman*
KENNETH L. NASH ERNEST E. HOBSON
LEO H. LEARY ARTHUR L. ENO

APPENDIX D.

THE STATUS OF MAJORITY VERDICTS IN STATES OTHER THAN MASSACHUSETTS

JOHN R. ALLEN

CIVIL CASES

I. The following states have constitutions which authorize less than unanimous jury verdicts in civil cases:

Arkansas—Acts, 1929, p. 1521, Amendment No. 16, amending Art. II, sec. 7 of the Const. of 1874 (three-fourths majority).

California—Const., 1879, Art. I, sec. 7 amended by Stat. and Amend. 1927, p. 2367 and passed Nov. 6, 1928 (three-fourths majority).

Idaho—Const., 1890, Art. I, sec. 7 (three-fourths majority).

Missouri—Const., 1945, Art. I, sec. 22(a) (two-thirds majority in courts not of record and three-fourths majority in courts of record).

Montana—Const., 1889, Art. III, sec. 23 (two-thirds majority).

Nevada—Const., 1864, Art. I, sec. 3 (three-fourths majority).

Oklahoma—Const., 1907, Art. II, sec. 19 (three-fourths majority).

Oregon—Const., 1857, Art. VII, sec. 5 (three-fourths majority).

Texas—Const., 1876, Art. V, sec. 13 (three-fourths majority, "provided that the legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict." Rule of Civil Procedure 291 requires the concurrence of all members of the jury.)

Utah—Const., 1895, Art. I, sec. 10 (three-fourths majority).

Total—10 states.

II. The following states have constitutions which authorize their legislatures to prescribe less than unanimous jury verdicts in civil actions:

Arizona—Const., 1912, Art. II, sec. 23; Code Ann. sec. 21-1003 (three-fourths majority in courts of record).

Kentucky—Const., 1891, sec. 248; Ky. Rev. Stat. 1953 sec. 29.330 (three-fourths majority).

Minnesota—Const., 1857, Art. I, sec. 4 (five-sixths verdict after not less than 6 hours deliberation); Minn. Stat. Ann. sec. 546.17 (five-sixths verdict after 12 hours deliberation).

Mississippi—Const., 1890, Art. III, sec. 31; Miss. Code Ann., Tit. 10, sec. 1801 (three-fourths verdict).

Nebraska—Const., 1875, Art. I, sec. 6; Neb. Rev. Stat. sec. 25-1125 (five-sixths verdict after at least 6 hours deliberation).

New Jersey—Const., 1947, Art. I, sec. 9; N. J. Stat. Ann., Tit. 2A, sec. 80-2 (five-sixths verdict).

New Mexico—Const., 1912, Art. II, sec. 12 (less than unanimous vote of the jury); N. Mex. Stat. Ann., sec. 21-1-1, Rule 48(b) (five-sixths verdict).

New York—Const., 1938, Art. I, sec. 2; Clevenger's Civil Practice Act, sec 463(a) (five-sixths verdict).

Ohio—Const., 1851, Art. I, sec. 5; Page's Ohio Gen. Code, sec. 11420-9 (three-fourths verdict).

South Dakota—Const., 1889, Art. VI, sec. 6; S. Dak. Code 1939, sec. 33.1333 (three-fourths verdict).

Washington—Const., 1889, Art. I, sec. 21 (9 or more jurors); Wash. Rev. Code, sec. 4.44.380 (10 or more jurors).

Wisconsin—Const., 1848, Art. I, sec. 5; Wisc. Stat., sec. 270.25(1) (five-sixths verdict).

Total—12 states.

III. The following states have constitutions which require unanimous verdicts in civil cases:

Maryland—Const., 1867, Dec. of Rights, Art. V ("That the inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law. . . .").

South Carolina—Const., 1895, Art. V, sec. 22 ("The petit jury of the Circuit Courts shall consist of twelve men, all of whom must agree to a verdict in order to render the same. . . .").

Total—2 states. [This is also the law of Massachusetts, see p. 36.]

IV. The remaining states, with the exception of Louisiana, have constitutions which in general terms preserve inviolate the right to trial by jury.

A. In addition to general constitutional language, the following states have statutes which indicate that the right to trial by jury in civil cases includes a unanimous verdict [for Massachusetts, see p. 36]:

Iowa—Const., 1857, Art. I, sec. 9; Rules of Civil Procedure 203(a).

Kansas—Const., 1859, Bill of Rights, sec. 5; Kan. Gen. Stat. Ann., sec. 60-2917.

North Dakota—Const., 1889, Art. I, sec. 7; N. D. Rev. Code 1943, Tit. 28, sec. 1506.

Vermont—Const., 1913, Art. 10; Ver. Stat. c. 61, sec. 1263.

Total—4 states.

B. In the following states decisions have construed general constitutional guarantees of trial by jury as requiring a unanimous verdict in civil cases:

Colorado—Const., 1876, Art. II, sec. 23; *Denver v. Hyatt*, 28 Colo. 129, 63 Pac 403 (1900).

Florida—Const., 1885, Dec. of Rights, sec. 3; *Flint River Steam Boat Co. v. Roberts*, 2 Fla. 102, 48 Am. Dec. 178 (1848).

Illinois—Const., 1870, Art. II, sec. 5; *Liska v. Chicago Ry. Co.*, 318 Ill. 570, 149 N. E. 469 (1925).

Indiana—Const., 1851, Art. I, sec. 20; *W. T. Rawleigh Co. v. Snider*, 207 Ind. 686, 194 N. E. 356 (1935).

Michigan—Const., 1908, Art. II, sec. 13; *See Wixom v. Bixby*, 127 Mich. 479, 485, 86 N. W. 1001, 1004 (1901).

New Hampshire—Const., Bill of Rights, Art. XX; *Opinion of the Justices*, 41 N. H. 550 (1860).

North Carolina—Const., 1868, Art. I, sec. 19; *In re Will of Sugg*, 194 N. C. 638, 140 S. E. 604 (1927)

Pennsylvania—Const., 1873, Art. I, sec. 6; *Wellitz v. Thomas*, 122 Pa. Super. 438, 185 Atl. 864 (1936).

Wyoming—Const., 1889, Art. I, sec. 9; *First National Bank v. Foster*, 9 Wyo. 157, 61 Pac. 466 (1900).

Total—9 states.

C. In the following states unanimity seems never to have been questioned, and in many of them there are decisions, usually dealing with the distinction between law and equity, which indicate that the right to trial by jury being preserved is the right as it existed at common law [for Mass., see p. 36]:

Alabama—Const., 1901, Art. I, sec. 11.

Connecticut—Const., 1955, Art. I, sec. 21.

Delaware—Const., 1897, Art. I, sec. 4.

Georgia—Const., 1945, Art. VI, sec. 16, para. 1.

Maine—Const., 1819, Art. I, sec. 20.

Rhode Island—Const., 1842, Art. I, sec. 15.

Tennessee—Const., 1870, Art. I, sec. 6.

Virginia—Const., 1902, Art. I, sec. 11.

West Virginia—Const., 1872, Art. III, sec. 13.

Total—9 states.

V. Louisiana, without any constitutional provision respecting jury trial in civil cases, authorizes by statute a three-fourths verdict. La. Rev. Stat. 1950, sec. 13:3050.

CRIMINAL CASES

I. The following states have constitutions which authorize less than unanimous jury verdicts in some criminal cases:

Idaho—Const., 1890, Art. I, sec. 7; Idaho Code, sec. 19-1902 (five-sixths verdict in misdemeanor cases).

Louisiana—Const., 1921, Art. VII, sec. 41 (three-fourths verdict in cases necessarily punishable by hard labor).

Montana—Const., 1889, Art. III, sec. 23 (two-thirds verdict in less than felony cases).

Oklahoma—Const., 1907, Art. II, sec. 19 (three-fourths verdict in less than felony cases).

Oregon—Const., 1857, Art. I, sec. 11 (five-sixths verdict except in first degree murder cases).

Texas—Const., 1876, Art. V, sec. 13 (three-fourths verdict in less than felony cases, "provided that the legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict." Code of Crim. Proc., Tit. 8, Art. 687 and Art. 688 require unanimity.)

Total—6 states.

II. Many states have constitutions which require unanimity for a criminal case. [For Massachusetts, see p. 36.]

A. The following states have constitutions which in terms require unanimity:

Maine—Const., 1819, Art. I, sec. 7.
Maryland—Const., 1867, Dec. of Rights, Art. 21.
North Carolina—Const., 1868, Art. I, sec. 13.
South Carolina—Const., 1895, Art. V, sec. 22.
Utah—Const., 1895, Art. I, sec. 10.
Vermont—Const., 1913, Art. X.
Virginia—Const., 1902, Art. I, sec. 8.

Total—7 states.

B. The following states have constitutional provisions which imply that unanimity is required:

Arizona—Const., 1912, Art. II, sec. 23 ("the right of trial by jury shall remain inviolate, but provisions may be made by law for a jury of a number of less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record.") Since this is a characteristic provision, hereafter the applicable section of the constitution will not be quoted.

Arkansas—Const., 1874, as amended in 1929, Art. II, sec. 7.

California—Const., 1879, Art. I, sec. 7.

Colorado—Const., 1876, Art. II, sec. 23.

Kentucky—Const., 1891, Bill of Rights, sec. 7 and sec. 248.
Minnesota—Const., 1857, Art. I, sec. 4.
Mississippi—Const., 1890, Art. III, sec. 31.
Missouri—Const., 1945, Art. I, sec. 22(a).
Nebraska—Const., 1875, Art. I, sec. 6.
Nevada—Const., 1864, Art. I, sec. 3.
New Jersey—Const., 1947, Art. I, sec. 9.
New Mexico—Const., 1912, Art. II, sec. 12.
New York—Const., 1938, Art. I, sec. 2.
North Dakota—Const., 1889, Art. I, sec. 7.
Ohio—Const., 1851, Art. I, sec. 5.
South Dakota—Const., 1889, Art. VI, sec. 6.
Washington—Const., 1889, Art. I, sec. 21.
Wisconsin—Const., 1848, Art. I, sec. 5.

Total—18 states.

III. In the remaining states there is a constitutional guarantee of trial by jury. In a few states this has been interpreted to include a unanimous verdict; in others such an interpretation follows from the unanimity requirement in civil cases; and in some of the following states unanimity seems not to have been questioned:

Alabama—Const., 1901, Art. I, sec. 11; *Dixon v. State*, 27 Ala. App. 64, 167 So. 340 (1936), *cert. denied*, 232 Ala. 150, 167 So. 349 (1936).
Connecticut—Const., 1955, Art. I, sec. 21.
Delaware—Const., 1897, Art. I, sec. 4.
Florida—Const., 1885, Dec. of Rights, sec. 3.
Georgia—Const., 1945, Art. VI, sec. 16, para. 1.
Illinois—Const., 1870, Art. II, sec. 5.
Indiana—Const., 1851, Art. I, sec. 13.
Iowa—Const., 1857, Art. I, sec. 9.
Kansas—Const., 1859, Bill of Rights, sec. 5.
Michigan—Const., 1908, Art. II, sec. 13; *Swart v. Kimball*, 43 Mich. 443 (1880).
New Hampshire—Const., Bill of Rights, Art. XVI (guarantees only trial by jury in capital cases but *Opinion of the Justices*, 41 N. H. 550 (1860) requires unanimity in all cases).
Pennsylvania—Const., 1873, Art. I, sec. 6; *Commonwealth v. Fugmann*, 330 Pa. 4, 198 Atl. 99 (1938).
Rhode Island—Const., 1842, Art. I, sec. 15.
Tennessee—Const., 1870, Art. I, sec. 6; *Willard v. State*, 174 Tenn. 642, 130 S. W. 2d. 99 (1939).
West Virginia—Const., 1872, Art. III, sec. 14.
Wyoming—Const., 1889, Art. I, sec. 9.

Total—16 states.

APPENDIX E.

STATISTICAL INDEX

APPENDIX F.

SUMMARY OF THE WORK ACCOMPLISHED BY THE VARIOUS COURTS

Supreme Judicial Court

During the court year September 1, 1954, to August 31, 1955, the Supreme Judicial Court decided 220 cases[1] with opinions and 21 cases by rescripts, not accompanied by opinions, as shown by the table below. There were also six advisory opinions. These opinions are reported beginning 331 Mass. 585 and ending 332 Mass. .....

Geographical Distribution of Full Bench Cases

	Opinions	*Rescripts Only*
Barnstable	3	
Berkshire	2	
Bristol	17	1
Dukes County		
Essex	17	
Franklin		
Hampden	13	
Hampshire	2	
Middlesex	38[2]	8
Nantucket		
Norfolk	16[2]	1
Plymouth	8	
Suffolk	88	9
Worcester	17	2

There were eight criminal cases; four of these had typewritten transcripts of testimony.

As of the close of the September, 1955, consultation, there were pending four cases in which opinions had not been written, and two cases in which opinions had been written but not agreed to.

The table of full-bench cases from 1875 to 1939 appears on p. 71 of the 15th Report. Supreme Court business, other than full-bench cases, appears below.

[1] Where one opinion covered more than one case, it has been counted as one case.
[2] One opinion covered two cases, one originated in Middlesex and the other in Norfolk.

SUPREME JUDICIAL COURT ENTRIES FOR ALL COUNTIES

FOR THE YEAR BEGINNING SEPTEMBER 1, 1954 THROUGH AUGUST 31, 1955

(Not Including Full Bench Cases)

	Equity	Transferred to Superior Court	Referred to Masters or Auditors	Prerogative Writs	Petitions for Admission to Bar	Other Proceedings
Barnstable	2	—	—	—	—	—
Berkshire	1	2	—	2	—	1
Bristol	1	—	—	1	—	1
Dukes	—	—	—	—	—	—
Essex	—	1	—	3	—	—
Franklin	—	—	—	—	—	—
Hampden	—	—	—	—	—	2
Hampshire	—	—	—	—	—	—
Middlesex	3	1	—	4	—	—
Nantucket	—	—	—	—	—	—
Norfolk	1	—	—	—	—	—
Plymouth	2	—	—	—	—	4
Worcester	1	—	—	—	—	—
Totals	11	4	—	10	—	8

SUPREME JUDICIAL COURT FOR THE COUNTY OF SUFFOLK

FROM SEPTEMBER 1, 1954 TO SEPTEMBER 1, 1955

Transferred to Superior Court	Prerogative Writs	Petitions for Admission to the Bar
15	79	930

Law Docket

Appeals from decision of Appellate Tax Board		43
Petitions for Admission to the Bar		930
Petitions for Writ of Certiorari		10
Petitions for Writ of Error		27
Petitions for Writ of Habeas Corpus		24
Petitions for Writ of Mandamus		16
Petitions for Writ of Prohibition		2
Petitions for Discharge under G. L. c. 123, §§ 91 and 92		2
Petition for Stay of Execution		1
Petitions for Motion of Designation of Counsel		2
Petition under G. L. c. 211, § 3		1
Petition under G. L. c. 214, § 22		1
		1,059
Total Entries on Law Docket	*1,059*	

Equity Docket

Bills of Complaint in Equity		12
Bills in Equity		16
Bills of Review		2
Petitions for Transfer of Church Property		2
Petitions to Continue Restraining Order		2
Petitions for Appeal		2
Petitions for Suspension of Decree of Superior Court		3
Petitions for Leave to file Bill of Review		2
Petitions for Instructions		5
Petitions for Dissolution under G. L. c. 155, § 50A (about 734 corporations)		3
Petitions for Dissolution brought by individuals		2
Petitions for transfer of Cause from Superior Court to Supreme Judicial Court		2
Petitions for Declaratory Relief under G. L. c. 231A		3
Petitions under G. L. c. 214, § 22		4
Petition under G. L. c. 214, § 12		1
Petition for Stay of Proceedings		1
Appeal from Decision and order of Insurance Commissioner		1
		63
Total Entries on Equity Docket	*63*	
Total Entries on both Dockets	1,122	

SUPERIOR COURT

For the table of criminal business, see p. 93. For the tables of civil business—entries, trials, verdicts, cases disposed of, etc., see tables 1 to 12 (pp. 93-106). These tables are for the year ending June 30, 1955. For Appellate Division for Criminal Sentences, see p. 81.

In addition to the number of trials shown in Table 3, p. 96 (meaning completed trials) the clerk of court in Suffolk reports that 924 jury cases were settled before trial, 310 jury cases were settled during trial, 214 without jury cases were settled before trial and 18 without jury cases were settled during trial, a total of 1,466 cases settled in the various trial sessions. This figure is not reflected in the report of the Pre-Trial Session.

REFERENCES TO AUDITORS AND MASTERS
CALENDAR YEAR 1954

County	*Auditors*	*Master*	*Cost*
Barnstable	23	11	$ 7,191.25
Berkshire	5	1	2,979.39
Bristol	17	30	4,721.50
Essex	28	21	6,134.31
Franklin	2	6	1,256.50
Hampden	6	6	7,488.46
Hampshire	2	3	1.547.00
Middlesex	28	40	14,861.75
Norfolk	393	39	24,568.92
Plymouth	5	10	3,832.92
Suffolk	146	37	31,159.55
Worcester	20	11	6,602.75
	675	215	$112,344.30

Two or more cases tried together are counted as one reference.

NOTE: In Barnstable, Berkshire, Bristol, Hampshire and Suffolk Counties these figures apply to the Superior Court only. In other Counties they include Supreme Judicial, Probate and Land Courts.

THE CONCILIATION SYSTEM IN BERKSHIRE COUNTY UNDER THE NOTICE TO THE BAR DATED JANUARY 5, 1955, FROM FEBRUARY 1 TO NOVEMBER 1, 1955

The Clerk of Courts reports:

Number of cases listed for reference		264
Rejection of conciliation:		
By Plaintiff	38	
By Defendant	37	
By Both	10	
		85
Order of reference vacated		8
Settled before reference or conference		89
Results of conferences:		
Settled	34	
Not settled	28	
Didn't appear	1	
		63
Total amount paid referees		$549.00

The above figures are not final as to the 264 cases, as there are many conferences on these cases scheduled for conciliation. May I also hazard the opinion that the whole program has been worthwhile, as one group of 8 cases, which would have taken over a week to try at a cost to the county of $2,000 ±, were settled by reference to a referee.

PRE-TRIAL SESSIONS—SUFFOLK COUNTY

JULY 1, 1954 TO JUNE 30, 1955

Number of Cases on Pre-trial List	7,812
Number of Cases Pre-tried	5,021
Number of Cases Settled by Agreement	771
Number of Cases Nonsuited	136
Number of Cases Defaulted	122
Number of Cases Disposed of by nonsuit and default or discontinued	84
Number of Cases Referred to Auditors	315
Number of Cases Where Jury was Waived (to trial lists)	374
Number of Cases Continued	1,678
Number of Cases to Trial Lists (short lists	1,905
Number of Cases from Pre-trial Lists Settled on Trial Lists (short lists)	1,255
Number of Days Pre-trial Sessions Sat	126

"DISPOSITIONS"

JULY 1, 1954 TO JUNE 30, 1955

Cases on Pre-trial List			7,812
Cases Pre-tried	5,021		
Cases not Pre-tried	2,791		
Cases Pre-tried and Settled while Awaiting Trial	1,255		
Referred to Auditors	315		
Sent to Trial Sessions	2,279		
Awaiting Trial	1,172		
		5,021	
Cases not Pre-tried			
Settled	771		
Nonsuits	136		
Defaults	122		
Nonsuits and Defaults	84		
Continuances	1,671		
		2,791	
Total Pre-trial "Dispositions"			7,812

There were also pre-trial sessions in Hampden and Worcester. See p. 85.

APPELLATE DIVISION, SUPERIOR COURT

FOR THE REVIEW OF SENTENCES TO THE STATE PRISON AND REFORMATORY FOR WOMEN

APPEALS IN INDICTMENT CASES UNDER ST. 1943, CH. 558

JULY 1, 1954—JUNE 30, 1955

(Report by William M. Prendible, Clerk of the Superior Court for Criminal Business, Suffolk County)

Number of Appeals pending June 30, 1954	20	Sentences increased	1
Number of Appeals filed	290	Appeals dismissed	165
Sentences modified	66	Appeals withdrawn	54
		Pending June 30, 1955	24

The division, consisting of three justices, sat 19 days.

Appeals where the sentence has been modified or increased by the Appellate Division from July 1, 1954 to June 30, 1955.

Offence	*Original Sentence*	*New Sentence*
Robbery	7-15 years	5-15 years

Offence	*Original Sentence*	*New Sentence*
Robbery	9-12 years	Mass. Reformatory 5 years 1 day
Robbery	6-10 years	Mass. Reformatory
Robbery	Life	20-25 years conc.
Robbery	Life	20-25 years conc.
Robbery, Armed	7-10 years	Mass. Reformatory 5 years 1 day
Robbery, Armed	7-10 years	5-7 years
Robbery, Armed	7-10 years	Mass. Reformatory 5 years 1 day
Robbery, Armed	7-10 years	2½-3 years
Robbery, Armed	9-12 years from and after sentence serving in State Prison	5-7 years from and after sentence serving in State Prison
Robbery, Armed	5-10 years	3-5 years
Accessory before the fact to Robbery, Armed	5-7 years	2½-3 years
Accessory before the fact to Abortion	5-7 years	2½-3 years
Abuse	10-12 years	8-12 years
Indecent A&B on child under the age of 14	3½-4 years	18 months House of Correction
Rape	10-12 years	5-8 years
Operating auto without authority after revocation of right	3-5 years	18 months House of Correction

Appeals where the sentence has been modified or increased by the Appellate Division from July 1, 1954 to June 30, 1955 and the defendant has appealed from more than one sentence.

A.	Unlawful Sale of Narcotic Drug	Count 1	3-5 years	2½-5 years
		Count 2	3-5 years from and after Count 1	2½-5 years from and after Count 1
		Count 3	3-5 years from and	2½-5 years conc. with

Offence	*Original Sentence*	*New Sentence*
	after Count 2	Count 1
Count 4	3-5 years conc. with Count 1	2½-5 years conc. with Count 1
Unlawful Sale of Narcotic Drug Count 1	3-5 years conc.	2½-5 years conc.
Count 2	3-5 years conc.	2½-5 years conc.
B. Robbery, Armed	4-6 years	Mass. Reformatory 5 years 1 day
Accessory before Fact to Robbery, Armed	4-6 years conc.	On File
Accessory before Fact to Robbery, Armed	4-6 years	On File
C. Robbery	5-7 years	Mass. Reformatory 5 years 1 day
Robbery	5-7 years conc.	Mass. Reformatory 5 years 1 day conc.
D. B&E Day and Larceny	5-7 years	Appeal Dismissed
B&E Day and Larceny	3-5 years from and after	Appeal Dismissed
B&E Day and Larceny	3-5 years from and after	3-5 years conc.
E. B&E Night	3-5 years	Mass. Reformatory 5 years 1 day
Robbery	3-5 years conc. with sentence serving	Mass. Reformatory 5 years 1 day conc. with sentence serving
Robbery	3-5 years conc. with sentence serving	Mass. Reformatory 5 years 1 day conc. with sentence serving
Carrying Weapon under his Control in Vehicle	3-5 years conc.	Mass. Reformatory 5 years 1 day conc. with sentence serving
F. B&E Night	3-5 years from and after sentence serving	5-7 years from and after sentence serving
B&E Night	3-5 years conc.	Appeal Dismissed

Offence	*Original Sentence*	*New Sentence*
Poss. Burg. Tools	2½-3 years conc.	Appeal Dismissed
B&E Night	3-5 years conc.	Appeal Dismissed
G. Robbery, Armed	3-5 years	Mass. Reformatory 6 years
Carrying a Weapon	2½-3 years conc.	Mass. Reformatory 6 years conc.
Carrying a Weapon	2½-3 years conc.	Mass. Reformatory 6 years conc.
H. Robbery, Armed	15-20 years conc.	Mass. Reformatory 10 years
Robbery, Armed	15-20 years	Mass. Reformatory 10 years conc.
Robbery, Armed	7-10 years conc. with sentence serving	Mass. Reformatory 10 years conc. with sentence serving
Robbery, Armed	7-10 years conc. with sentence serving	Mass. Reformatory 10 years conc. with sentence serving
I. Robbery, Armed	15-20 years	Mass. Reformatory 10 years
Robbery, Armed	15-20 years conc.	Mass. Reformatory 10 years conc.
Robbery, Armed	7-10 years conc. with sentence serving	Mass. Reformatory 10 years conc. with sentence serving
Robbery, Armed	7-10 years conc. with sentence serving	Mass. Reformatory 10 years conc. with sentence serving
J. Rape	30-35 years	25-35 years
Kidnapping	30-35 years conc.	25-35 years conc.
K. Rape	30-35 years	25-35 years
Robbery	30-35 years conc.	25-35 years conc.
Kidnapping	8-10 years from and after	8-10 years conc.
L. B&E Night	5-7 years from and after sentence serving	5-7 years conc. with sentence serving

	Offence	*Original Sentence*	*New Sentence*
	B&E Night	5-7 years conc.	5-7 years conc.
	B&E Night	5-7 years conc.	5-7 years conc.
	B&E Night	5-7 years conc.	5-7 years conc.
	B&E Night	5-7 years conc.	5-7 years conc.
M.	B&E Night	5-7 years from and after sentence serving	5-7 years conc. with sentence serving
	B&E Night	5-7 years conc.	5-7 years conc.
	B&E Night	5-7 years conc.	5-7 years conc.
	B&E Night	5-7 years conc.	5-7 years conc.
	B&E Night	5-7 years conc.	5-7 years conc.
N.	Vio. G. L. Ch. 265, Sec. 25	4-5 years from and after sentence serving	1 year from and after sentence serving
	Assault with intent to Commit a Felony	4-5 years conc.	1 year conc.
	Attempt to Escape	4-5 years conc.	1 year conc.
O.	Vio. G. L. Ch. 265, Sec. 25	4-5 years from and after sentence serving	1 year from and after sentence serving
	Assault with intent to Commit a Felony	4-5 years conc.	1 year conc.
	Attempt to Escape	4-5 years conc.	1 year conc.
P.	Assault with intent to Murder, Armed	5-7 years	Appeal Dismissed
	A&B Dangerous Weapon	5-7 years conc.	On File

PRE-TRIAL HAMPDEN

SEPT., OCT., NOV. 1954; JAN., FEB., APRIL, MAY, JUNE 1955

Cases on Pre-trial List	1164	Cases defaulted	9
Cases Pre-tried	631	Cases nonsuited	2
Groups Pre-tried	431	Jury short list without pre-trial	20
Added to next list	352	Jury Waived	36
Group to next list	255	Remanded	1
Cases settled	108	Referred to Auditor	5
Groups settled	93		

PRE-TRIAL WORCESTER

Pre-tried	495	Non-suited	9
Settled	78	Defaulted	7
Jury Waived	30	To Auditors	4
		"Neither party" ordered	1

LAND COURT

This is a court of three judges created in 1898 for the registration of title to land and since then developed by additional extensions of jurisdiction both at law and in equity into the court in which almost all litigation regarding title to land takes place in addition to its original function of a court for the registration of title.

LAND COURT STATISTICS FROM JULY 1, 1954 TO JUNE 30, 1955

CASES ENTERED

Land Registration	755
Land Confirmation	5
Land Registration, Subsequent	917
Tax Lien	599
Miscellaneous	362
Equity	1,392
Total Cases Entered	4,030

Decree plans made	713
Subdivision plans made	766
Total plans made	1,479
Total appropriation	$266,745.00
Fees sent to State Treasurer	88,186.41
Income from Assurance Fund applicable to expenses	9,666.86
Total expenditures	259,205.80
Net cost to Commonwealth	161,352.53
Assurance Fund June 30, 1955	366,300.11
Assessed value of land on petitions in registration and confirmation cases entered	3,497,728.61

CASES DISPOSED OF BY FINAL ORDER DECREE OR JUDGMENT BEFORE HEARING

Land Registration	680
Land Confirmation	6
Land Registration, Subsequent	917
Tax Lien	1,182
Equity and Miscellaneous	1,842
Total Cases Disposed of	4,627

PROBATE COURTS

There is a probate court in each county with jurisdiction of wills, trusts, settlement of estates, guardianship, adoption, change of name, divorce and separate maintenance and a variety of other matters. There are three judges in Suffolk and Middlesex, two in Essex, Worcester, Hampden, Norfolk and Bristol, one in each of the other counties.

The report prepared by the Administrative Committee of the Probate Courts for the year 1954 appears on page 107.

THE MUNICIPAL COURT OF THE CITY OF BOSTON

This court consists of a chief justice and eight associate justices, all full time judges. There are also six special justices. The tables showing the *details* of the civil business for the year 1954-5 will be found on pp. 91-92. The comparative table of civil business from 1913 to 1939 will be found in the 15th Report, p. 65. The condensed business and other information for 1954-5 appears below.

MUNICIPAL COURT OF THE CITY OF BOSTON

CIVIL ACTIONS (OTHER THAN SMALL CLAIMS CASES) 1954 and 1955 (9 Months)

YEAR	Entered	Removed	Per Cent of Entries	All Defaults	Per Cent of Entries	Tried	Per Cent of Entries	Total Plaintiffs' Judgments	Average Plaintiffs' Judgments, Contract Only	Heard, Appellate Division	Per Cent of Trials	To Supreme Judicial Court from Appellate Division	To Supreme Judicial Court under Employment Security Law
1954	19,588	1,462	7.5	8,149	41.6	1,873	9.6	$3,214,739.86	$259.04	28	1.5	14	1
1955 (9 mos.)	18,200	3,667	20.1	6,698	36.8	1,431	7.9	$2,655,112.42	$279.79	19	1.3	8	1

SUBDIVISION—CONTRACT AND TORT—1954 and 1955 (9 Months)

YEAR	ENTERED		REMOVED				TRIED	
	Contract	Tort	Contract	Per Cent of Entries	Tort	Per Cent of Entries	Contract	Tort
1954	12,323	6,122	334	2.7	1,084	17.7	733	906
1955 (9 mos.)	9,539	7,849	309	3.2	3,322	42.3	575	703

TORT ENTRIES, REMOVALS AND TRIALS—1954

TORTS ENTERED		TORT REMOVALS		TORTS TRIED	
Motor Vehicle	5,028	Motor Vehicle, Pltf..	384	Motor Vehicle	765
Other Torts	1,094	Motor Vehicle, Def't.	621	Other Torts	141
		Other Torts	79		
Total	6,122	Total	1,084	Total	906

1955 (9 Months)

TORTS ENTERED		TORT REMOVALS		TORTS TRIED	
Motor Vehicle	6,771	Motor Vehicle, Pltf..	2,168	Motor Vehicle	609
Other Torts	1,078	Motor Vehicle, Def't.	1,087	Other Torts	94
		Other Torts	67		
Total	7,849	Total	3,322	Total	703

SMALL CLAIMS DIVISION

	1954			1955 (9 Months, Jan.-Sept.)		
	Contract	Tort	Total	Contract	Tort	Total
Actions Entered	1,896	254	2,150	1,109	173	1,282
Actions Settled	447	93	540	281	52	333
Counter-Claims or Set-Offs	8	5	13	3	3	6
Trials	250	119	369	179	90	269
Reserved	56	55	111	59	39	98
Finding for Plaintiff	191	94	285	128	65	193
Finding for Defendant	59	25	84	51	25	76
Judgments by Default	910	4	914	537	1	538
Judgments by Non-Suit	20	6	26	12	4	16
Amount of Plaintiff's Judgments	$39,853.69	$3,889.52	$43,743.21	$25,094.69	$2,490.62	$27,585.31
Transferred to Regular Civil Docket	8	5	13	6	2	8
Removed to Superior Court	4	3	7	4	1	5
Executions	323	82	405	188	41	229
Amount of Plaintiff's Claims	$68,517.24	$12,253.20	$80,770.44	$39,890.43	$8,579.21	$48,469.64
Notices Returned Unclaimed	626	10	636	287	9	296

Supplementary Process

	1954	1955 (9 Months)
Entries	3,426	2,490
Summons	5,151	3,474
Capias	3,097	2,460
No. to Show Cause	1,496	1,248
	9,744	7,182

Summary Process (Ejectment) Entries

1952	543
1953	500
1954	543
1955 (9 Months)	395

Execution Department—Paid Orders

	1954	1955 (9 Months)
Order of Notice	883	724
Certificate	795	569
Special Precept	162	150
Supersedeas	7	4
Comm.—Deposition	18	10
Transcript	25	35
Opinion	9	4
Order of Sale	4	10
Copies	74	67
Miscellaneous	5	7
	1,982	1,580

MUNICIPAL COURT OF THE CITY OF BOSTON
FOR CRIMINAL BUSINESS

JULY 1, 1954 — JUNE 30, 1955

TOTAL BUSINESS OF THE COURT

1.	Automobile Violations	1,174
2.	Traffic Violations	39,233
3.	Domestic Relations	409
4.	Drunkenness in Court	6,738
5.	Drunkenness Released by Probation Officers	6,072
6.	Other Criminal Cases	4,117
7.	Inquests Entered	1
8.	Search Warrants Issued	90
9.	GRAND TOTAL BUSINESS	57,834

DISPOSITIONS

1.	Pleas of Guilty	34,612
2.	Pleas of Not Guilty	2,624
3.	Placed on file before and after trial, dismissed for want of prosecution, without a finding, etc.	8,460
4.	Defendants not arrested, pending for trial	5,417
5.	Defendants Acquitted	720
6.	Defendants Bound Over to the Grand Jury	741
7.	Defendants Placed on Probation (not including surrenders)	3,200
8.	Defendants Fined and Paid	29,672
9.	Imprisonments	2,594
10.	Fines Appealed	145
11.	Imprisonments Appealed	475
12.	Pending for Sentence	145
13.	Total Dispositions	51,671

NON-CRIMINAL PARKING LAW

1.	Parking tags turned in by violators as issued by police	394,904

FINANCES

1.	Money received by parking tag office	$397,825.43
2.	Money received from court fines, forfeitures, fees	79,222.00
3.	Total moneys received and turned over to Commonwealth, County and City of Boston	$477,047.43
4.	Moneys received as bail and turned over to Superior Court or returned to defendant	169,703.00
5.	Total moneys handled by the court	$646,750.43

THE BOSTON JUVENILE COURT

The Boston Juvenile Court, created in 1906, is a separate court with jurisdiction in juvenile cases in the central district of Boston. It has one judge and two special justices.

OCTOBER 1, 1954 — SEPTEMBER 30, 1955

COMPLAINTS:

	Boys	*Girls*	*Totals*
Juvenile Criminal	1	0	1
Delinquent	567	397	964
Wayward	0	0	0
Totals	568	397	965

	Men	*Women*	*Total*
Adults	36	37	73

	No. of Complaints	*No. of Children Represented*
Neglected Children	20	62

TOTAL NUMBER OF ALL COMPLAINTS:

Juvenile	965
Adult	73
Neglected Children	20
Total	1,058

* * * * * *

Active as of September 30, 1955:

	Individuals		*Complaints*	
JUVENILES:				
Boys	245		272	
Girls	228		231	
Totals		473		503
ADULTS:				
Men	33		33	
Women	34		34	
Totals		67		67
NEGLECTED CHILDREN		98		34
TOTALS		638		604

* * * * * *

NUMBER OF CASES:

Juveniles	473
Adults	67
Neglected Children	34
	574

OUT-OF-STATE CASES UNDER SUPERVISION—0

THE APPELLATE TAX BOARD

The Appellate Tax Board is an administrative tribunal, to which have been transferred some of the functions formerly imposed on the Superior Court. It came into existence under St. 1937, c. 400, on May 29, 1937, succeeding the old Board of Tax Appeals created in 1931 and later abolished.

In previous years we included statistical tables of the work of the Board, but, to avoid unduly extending this report, the Council refers to the annual report made to the legislature under G. L. Chapter 58A, Section 4.

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

January—December Inclusive

SUMMARY 1954

	Actions Entered—Total	Actions Removed to Superior Civil Court—Total	Actions Defaulted	Ints Filed		Marked for		Trial List				Findings		Appellate Division										
				To Plaintiff	To Defendant	Motion List	Trial List	Non-Suits	Defaults	Tried	Reserved	For Plaintiff	For Defendant	Requests for Report	Reports Allowed	Reports Dis-Allowed	Petitions to Establish	Reports Proved	Cases Heard	Cases Decided	Affirmed	Reversed	Modified	Entire Re-Trial Ordered	Partial Re-Trial Ordered
Contract	12,323	334	7,197	896	1,891	—	—	—	—	733	363	604	133	30	20	4	2	—	17	17	13	1	—	2	1
Tort	6,122	1,084	644	4,800	4,724	—	—	—	—	906	562	612	341	17	9	—	—	—	7	7	7	—	—	—	—
Contract or Tort	405	44	53	99	155	—	—	—	—	47	46	—	27	6	5	—	—	—	2	2	2	—	—	—	—
All Others	738	—	255	—	—	—	—	—	—	187	22	160	27	2	2	—	—	—	2	2	2	—	—	—	—
TOTALS	19,588	1,462	8,149	5,795	6,770	4,790	11,527	134	671	1,873	993	1376	528	55	36	4	2	—	28	28	24	1	—	2	1
1955 — JANUARY 1 — SEPTEMBER 30 — 9 MONTHS																									
TOTALS	18,200	3,667	6,698	5,817	6,556	3,914	7,749	92	489	1,431	724	1,061	354	36	12	2	—	—	19	19	15	1	2	1	—

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

SUMMARY 1954 *Continued*

	APPELLATE DIVISION—*Con.*							DEFENDANTS' JUDGMENTS						PLAINTIFFS' JUDGMENTS								
	Motions	Cases Consolidated Under G.L. c. 223, s. 2, as Amended	Appeals to Supreme Judicial Court	Appeals to Supreme Judicial Court—Perfected	Appeals to Supreme Judicial Court—Affirmed	Appeals to Supreme Judicial Court—Reversed	Appeals to Superior Civil Court	Entered by Non-Suit	Entered by Trial—Open Court	Entered by Trial—After Reservation	Entered by Agreement	Total Defts' Judgments	Neither Party by Agreement	Entered by Default	Entered by Trial—Open Court	Entered by Trial—After Reservation	Entered by Agreement	Total Plaintiffs' Judgments	Amount of Plaintiffs' Judgments	Average Amount of Plaintiffs' Judgments	Executions Issued	Actions Transferred under Chapter 369, Acts 1943 as Amended
Contract	1	13	7	3	1	—	—	113	29	104	44	290	255	7,214	341	263	899	8,717	$2,258,082.33	$259.04	8,129	—
Tort	—	31	4	3	3	—	—	167	37	304	33	541	329	10	307	305	2,948	3,570	954,164.43	267.27	839	—
Contract or Tort	—	4	1	—	—	—	—	8	1	26	4	39	26	—	—	—	—	—	—	—	—	—
A. Others	—	—	2	1	—	—	—	4	19	8	4	35	5	197	146	14	32	389	2,493.10	640	399	—
TOTALS	1	48	14	7	4	—	8	292	86	442	85	905	615	7,421	794	582	3,879	12,676	$3,214,739.86	$253.60	9,367	166
1955 — JANUARY 1 — SEPTEMBER 30 — 9 MONTHS — *Continued*																						
TOTALS	—	35	8	4	4	1	2	196	58	296	31	581	410	5,488	649	412	3,072	9,621	$2,655,112.42	$275.97	7,350	199

Appeals to Supreme Judicial Court under Employment Security Law
1954, Appeals — Filed 1; Perfected 1; Reversed 1. 1955 (9 Months) Appeals — Filed 1.
Cases Transferred to Federal Court 3.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CRIMINAL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955

Counties	CRIMINAL CASES															
	Number remaining at first of year.	Number of Indictments returned.	Number of appeal cases entered.	Appeals withdrawn before sitting following Entry.	Appeals withdrawn during or after next sitting, under St. 1937, c. 311.	Number of actions on bail bonds for recognizances entered.	Number disposed of in previous years brought forward for redisposition.	Indictments waived.	Number of complaints filed after waiver of indictment.	Number disposed of during year.	Number remaining at end of year.	Number tried during year by Superior Court Justices.	Number tried by District Court Justices.	Number awaiting trial at end of year.	Number of days during which a Superior Court judge has sat for trials, hearings or dispositions.	Days District Court judges were called in to sit in Superior Court.
Barnstable	83	86	110	22	18	0	1	0	1	183	58	9	25	37	10	20
Berkshire	111	48	97	28	15	0	0	42	0	142	115	10	13	114	14	9
Bristol	220	408	501	75	90	5	5	47	8	826	177	47	111	117	46	50
Dukes	8	3	15	5	0	0	0	0	0	14	2	4	0	2	4	0
Essex	48	284	478	129	29	0	27	174	0	823	30	93	18	30	70	13
Franklin	44	10	20	3	12	0	0	2	0	27	34	11	2	28	10	2
Hampden	105	169	171	22	28	1	2	51	3	355	144	35	13	135	62	10
Hampshire	84	45	56	7	14	0	1	23	15	72	101	12	15	23	11½	10
Middlesex	653	1,033	867	72	113	0	61	61	0	2,656	623	296	235	255	209	88
Nantucket	0	5	0	0	0	0	0	0	0	4	1	4	0	1	2	0
Norfolk	287	554	372	52	33	0	120	25	0	943	333	81	135	12	56	53
Plymouth	97	468	402	27	72	0	126	45	6	903	136	66	96	21	64	39
Suffolk	543	2,003	1,858	—	174	38	604	24	0	4,189	707	832	832	615	637	145
Worcester	346	592	237	58	76	0	29	187	3	929	331	148	107	312	77	59
Total	2,429	5,708	5,184	500	674	44	976	681	36	12,066	2,792	1,648	1,602	1,692	1,272½	498
												3,250				

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955

MADE BY THE CLERKS OF COURT TO THE JUDICIAL COUNCIL IN COMPLIANCE WITH ST. 1936, C. 31, § 3

COUNTY	CIVIL CASES										
	Table 1 — NUMBER UNDISPOSED OF AT BEGINNING OF YEAR										
	LAW										
	JURY CASES					NON-JURY				EQUITY	DIVORCE AND NULLITY
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	0	150	133	76	58	129	10	10	20	181	0
Berkshire	65	139	271	83	7	71	25	5	6	190	1
Bristol	0	444	1,621	420	86	155	58	35	35	469	0
Dukes	0	3	1	2	0	5	0	0	2	0	0
Essex	112	778	2,616	964	23	221	88	33	57	549	0
Franklin	14	29	145	21	0	18	0	3	4	108	0
Hampden	132	554	2,482	662	11	292	57	33	36	647	0
Hampshire	23	71	161	42	18	18	5	7	23	118	118
Middlesex	243	1,230	7,274	2,565	33	430	280	90	104	1,155	0
Nantucket	0	3	13	3	2	0	0	0	0	2	0
Norfolk	145	487	1,512	487	13	111	104	38	42	206	0
Plymouth	47	250	685	207	5	98	23	5	45	629	0
Suffolk	223	1,851	11,205	5,221	1,354	875	750	210	630	2,330	13
Worcester	0	466	4,194	931	182	275	225	67	75	479	0
Total	1,004	6,455	32,313	11,684	1,792	2,698	1,625	536	1,079	7,063	132
Combined Totals	53,248					5,938				7,063	132
Total of all kinds	66,381										

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955—*Continued*

CIVIL CASES

Table 2 — Number of New Cases Entered During the Year

County	Original Writs					Removals from District Courts								Equity	Divorce and Nullity	All Others
						By Plaintiff or Order of Ct.				By Defendant or Order of Court						
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others			
Barnstable	40	112	25	40	10	0	28	0	0	26	37	1	0	153	0	0
Berkshire	34	62	60	37	7	0	101	0	0	26	35	5	0	129	1	0
Bristol	40	146	245	174	12	3	217	1	3	84	338	51	5	244	0	0
Dukes	0	9	2	1	0	2	2	0	0	0	0	0	0	1	0	0
Essex	93	340	431	430	0	4	279	3	0	180	820	108	3	375	1	24
Franklin	18	18	21	12	0	51	0	0	0	4	14	0	0	40	0	5
Hampden	54	196	400	209	8	0	326	0	0	97	479	39	0	255	0	0
Hampshire	6	24	27	26	8	0	29	0	0	5	71	5	0	33	29	0
Middlesex	129	662	1,016	777	120	0	1,003	14	0	283	1,373	137	11	573	2	0
Nantucket	0	1	1	2	2	0	0	0	0	0	0	0	0	0	0	0
Norfolk	158	220	308	201	52	0	295	0	0	122	342	26	14	227	0	60
Plymouth	39	120	128	105	0	0	117	0	0	51	166	18	0	260	0	43
Suffolk	136	1,109	1,838	1,706	525	0	1,911	0	0	419	1,949	180	97	1,517	1	0
Worcester	151	404	848	452	127	0	939	1	0	117	250	27	3	332	0	0
Total	898	3,423	5,350	4,172	871	60	5,247	19	3	1,414	5,874	597	133	4,139	34	132
	14,714					13,347								4,139	34	132
	Total entries all kinds 32,366															

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955—*Continued*

County	CIVIL CASES										
	Table 3 — Number of Trials Cases Tried										
	Jury					Non-Jury				Equity	Divorce and Nullity
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	4	5	12	10	0	2	1	1	1	6	0
Berkshire	—	5	14	2	0	6	0	0	0	1	1
Bristol	9	16	156	4	35	8	0	1	0	11	0
Dukes	0	0	0	0	0	0	0	0	0	0	0
Essex	34	18	161	64	3	18	8	5	1	25	1
Franklin	1	2	11	1	1	0	1	1	0	0	0
Hampden	10	12	81	15	0	0	0	0	0	0	0
Hampshire	—	1	9	8	3	1	0	0	0	0	26
Middlesex	15	44	195	61	0	47	46	11	5	84	0
Nantucket	0	0	0	0	0	0	0	0	3	2	0
Norfolk	32	21	60	36	0	12	9	5	9	1	0
Plymouth	4	16	61	15	5	6	3	0	8	18	0
Suffolk	28	60	266	127	15	79	87	39	68	697	1
Worcester	12	26	149	62	1	7	3	6	0	33	0
Total	149	226	1,175	405	63	186	158	69	95	878	29
	149	1,869				508				878	29
Total Trials	3,433										

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955—*Continued*

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955—*Continued*

CIVIL CASES

Table 4 — Number and Amounts of Jury Verdicts — For Plaintiff

County	Less than $200			$200 to $500			$500 to $1,000			$1,000 to $2,000			$2,000 to $3,000			$3,000 to $4,000		
	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts
Barnstable	0	1	0	0	0	1	0	1	1	1	0	0	1	1	0	0	0	0
Berkshire	5	9	2	0	5	1	1	1	0	1	0	1	1	0	0	0	2	0
Bristol	0	6	0	1	12	2	0	9	0	1	7	3	1	3	0	0	2	1
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	0	5	2	0	10	1	4	7	3	2	6	1	1	8	1	0	2	1
Franklin	0	0	1	2	2	0	0	1	0	0	6	0	0	0	0	0	1	0
Hampden	1	15	1	2	22	3	1	25	0	1	15	5	0	8	3	0	6	1
Hampshire	0	1	0	0	2	0	0	1	0	0	0	2	0	1	1	1	0	0
Middlesex	1	5	3	2	14	2	6	22	4	11	20	11	2	11	5	2	9	2
Nantucket	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Norfolk	0	1	2	1	4	4	5	2	1	2	5	2	1	1	1	3	1	0
Plymouth	0	1	0	0	1	0	21	3	1	1	2	0	1	0	2	4	0	0
Suffolk	4	16	2	3	10	9	7	26	7	6	22	15	3	13	13	3	8	3
Worcester	4	16	0	1	12	3	4	10	2	1	7	4	2	3	0	0	3	1
Total	15	56	13	12	94	26	49	108	19	27	90	44	13	49	26	13	34	9
	84			132			176			161			88			56		
	216																	

CIVIL CASES

Table 4 — Continued

NUMBER AND AMOUNTS OF JURY VERDICTS

COUNTY	FOR PLAINTIFF									FOR DEFENDANT					
	$4,000 TO $5,000			$5,000 TO $10,000			OVER $10,000			ORDERED			NOT ORDERED		
	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts
Barnstable	0	1	0	0	0	0	0	0	0	0	1	1	1	3	5
Berkshire	1	0	0	1	0	0	0	0	0	0	0	0	0	5	0
Bristol	0	6	0	0	1	0	0	4	0	1	3	10	6	17	8
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	0	0	2	1	3	1	1	3	1	4	3	5	3	41	15
Franklin	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0
Hampden	1	3	1	1	7	2	0	6	4	2	4	0	3	24	5
Hampshire	0	0	0	0	1	0	0	1	2	0	1	8	0	8	6
Middlesex	1	5	1	1	8	1	1	9	0	3	12	17	14	80	15
Nantucket	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Norfolk	0	1	0	0	0	2	0	3	1	3	7	6	1	27	9
Plymouth	0	1	1	0	3	0	0	2	2	2	2	3	1	8	4
Suffolk	1	5	4	5	11	5	6	10	14	9	9	34	23	146	104
Worcester	0	1	0	7	2	1	1	3	6	6	4	6	5	19	5
Total	4	23	9	16	36	12	9	42	30	30	46	90	57	378	176
	36			64			81			166			611		
										777					

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955—*Continued*

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955—*Continued*

CIVIL CASES

Table 5 — NUMBER AND AMOUNTS OF NON-JURY FINDINGS

FINDINGS FOR PLAINTIFF

COUNTY	LESS THAN $200			$200 TO $500			$500 TO $1,000			$1,000 TO $2,000			$2,000 TO $3,000		
	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts
Barnstable	0	0	0	0	1	0	0	0	1	1	0	0	0	0	0
Berkshire	2	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Bristol	0	0	0	2	0	0	1	0	0	1	0	0	0	0	1
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	3	3	1	4	3	1	0	0	0	3	0	0	0	0	1
Franklin	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hampden	2	3	0	1	2	0	4	0	0	0	1	1	1	0	0
Hampshire	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Middlesex	2	3	0	5	9	1	8	10	1	6	3	2	5	2	0
Nantucket	1	0	2	0	0	0	0	0	1	0	0	0	0	0	0
Norfolk	1	0	3	4	2	0	0	1	1	5	5	1	0	2	0
Plymouth	0	1	0	2	4	0	2	1	1	2	0	0	0	1	0
Suffolk	9	13	23	15	16	21	11	16	9	11	7	8	2	2	6
Worcester	2	0	1	1	0	1	2	0	1	1	0	0	1	0	0
Total	25	23	30	34	37	24	29	28	15	30	16	12	10	7	8
	78			95			72			58			25		
	173														

CIVIL CASES

Table 5—Continued NUMBER AND AMOUNTS OF NON-JURY FINDINGS

County	Findings for Plaintiff												Findings for Defendant		
	$3,000 to $4,000			$4,000 to $5,000			$5,000 to $10,000			Over $10,000					
	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts
Barnstable	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Berkshire	0	0	0	1	0	0	0	0	0	0	0	0	2	0	0
Bristol	0	0	0	0	0	0	0	0	0	0	0	0	0	1	6
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	0	0	0	0	0	0	1	0	0	0	0	0	5	2	2
Franklin	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Hampden	0	0	0	0	0	0	0	1	0	0	0	0	6	0	0
Hampshire	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Middlesex	1	0	0	0	0	1	3	2	1	1	0	0	16	17	5
Nantucket	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Norfolk	0	1	0	0	1	0	0	0	0	0	0	0	2	8	4
Plymouth	0	1	0	0	0	0	0	0	1	0	0	3	1	0	0
Suffolk	3	3	3	1	0	6	1	0	9	0	0	19	24	30	22
Worcester	0	0	0	1	0	0	0	0	0	1	0	11	2	2	3
Total	4	5	3	3	1	8	5	3	11	2	0	33	59	60	43
	12			12			19			35			162		

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955 *Continued*

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955—*Continued*

County	CIVIL CASES — Table 6 — Finally Disposed Of																	
	Jury									Non-Jury								
	On Auditor's Report					Otherwise				On Auditor's Report				Otherwise				
	Land Taking	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Equity	Div. and Nul.
Barnstable	41	2	0	0	0	79	75	36	1	0	0	0	0	85	5	11	14	143	0
Berkshire	0	2	0	0	0	62	207	35	0	1	0	0	0	41	18	2	2	127	1
Bristol	0	0	0	0	0	162	805	198	12	0	0	0	0	58	18	17	27	223	0
Dukes	0	0	0	0	0	6	2	0	0	0	0	0	0	5	0	0	0	1	0
Essex	0	17	0	3	0	334	1,478	437	26	3	0	0	1	129	27	14	1	349	1
Franklin	10	0	0	0	0	19	100	13	1	0	0	0	0	8	1	0	5	51	0
Hampden	33	0	0	0	0	203	1,155	265	10	0	0	0	0	167	41	16	25	296	0
Hampshire	0	0	0	0	0	48	112	33	8	0	0	0	0	8	5	3	5	48	45
Middlesex	79	0	1	1	0	499	3,317	740	7	0	0	0	0	241	195	36	99	663	0
Nantucket	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	0	3	0
Norfolk	174	8	27	7	0	238	976	250	14	3	3	0	1	43	56	18	33	143	0
Plymouth	18	1	0	0	0	127	383	77	6	0	0	0	3	60	13	2	36	301	0
Suffolk	118	11	34	2	1	1,062	5,023	1,845	141	4	0	0	0	659	259	112	266	1,190	11
Worcester	86	15	2	5	0	274	1,782	413	0	3	0	1	0	98	44	24	46	98	0
Totals	559	56	64	18	1	3,114	15,415	4,342	226	14	3	1	5	1,602	682	256	559	3,636	58
Totals	559	139				23,097				23				3,099				3,636	58
Total	30,611																		

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955—*Continued*

County	CIVIL CASES														
	Table 7 — Cases Triable i. e. at Issue and Awaiting Trial and not Marked Inactive														
	Jury					Non-Jury				Triable but Enjoined				Equity	Divorce and Nullity
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	58	71	124	54	1	55	5	7	2	0	0	0	0	44	0
Berkshire	0	116	241	71	0	15	13	4	0	0	0	0	0	27	1
Bristol	0	386	1,501	362	9	77	28	11	7	0	0	0	0	108	0
Dukes	0	5	3	1	0	0	0	0	0	0	0	0	0	4	0
Essex	0	670	2,437	938	41	74	40	18	10	0	4	1	0	63	0
Franklin	18	20	111	18	0	5	0	0	13	0	0	0	0	9	0
Hampden	121	436	2,248	547	2	169	53	19	27	0	0	0	0	436	0
Hampshire	9	29	108	24	9	7	4	6	4	0	0	0	0	17	25
Middlesex	250	1,186	6,649	2,233	32	299	102	72	40	1	48	48	0	398	0
Nantucket	0	0	10	2	2	0	0	1	1	0	0	0	0	1	0
Norfolk	98	476	1,410	433	19	102	90	41	33	0	0	0	0	185	0
Plymouth	59	176	637	213	1	43	2	6	17	0	0	0	0	80	0
Suffolk	216	1,752	10,887	4,991	1,129	1,000	688	222	381	3	51	7	0	763	2
Worcester	256	849	3,591	1,212	12	296	58	19	73	5	33	21	0	639	0
Totals	1,085	6,172	29,957	11,099	1,257	2,142	1,083	426	608	9	136	77	0	2,774	28
Totals	49,570					4,259				222				2,774	28
Total	56,853														

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955—*Continued*

County	CIVIL CASES										
	Table 8 — Cases Remaining Undisposed of Including Cases Marked Inactive										
	Jury					Non-Jury				Equity	Divorce and Nullity
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	63	124	144	69	1	130	9	11	12	191	0
Berkshire	0	139	249	87	13	53	18	6	5	192	1
Bristol	56	460	1,619	455	11	152	36	11	32	490	0
Dukes	48	10	0	0	4	8	0	0	0	4	0
Essex	0	862	2,678	1,061	52	178	51	23	22	575	0
Franklin	22	29	131	20	3	13	0	2	3	97	0
Hampden	0	543	2,486	632	144	226	62	30	43	606	0
Hampshire	0	39	172	37	13	23	4	7	23	104	101
Middlesex	272	1,396	7,228	2,696	33	504	185	113	123	1,045	2
Nantucket	0	1	14	3	2	2	0	1	1	1	0
Norfolk	142	493	1,443	451	23	162	103	43	56	291	0
Plymouth	57	224	726	248	2	111	20	11	32	588	0
Suffolk	241	1,756	11,605	5,190	1,528	762	732	168	670	2,657	3
Worcester	274	705	3,755	1,295	15	327	74	25	87	713	0
Total	1,131	6,781	32,250	12,244	1,844	2,651	1,294	451	1,109	7,554	107
Totals	54,250					5,505				7,554	107
Total	67,416										

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955—*Continued*

County	CIVIL CASES										
	Table 9 — Cases Marked Inactive in Previous Years										
	Jury					Non-Jury				Equity	Divorce and Nullity
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	3	16	0	2	0	16	1	2	0	14	0
Berkshire	0	13	4	4	5	9	1	1	1	15	0
Bristol	0	16	26	15	1	20	9	7	6	50	0
Dukes	0	0	0	0	0	0	0	0	0	0	0
Essex	0	40	40	26	1	10	1	0	0	39	0
Franklin	0	3	5	0	0	5	0	2	0	12	0
Hampden	0	61	133	49	13	36	9	10	11	109	0
Hampshire	0	4	9	5	0	3	0	0	3	19	9
Middlesex	0	2	24	4	0	0	2	0	0	47	0
Nantucket	0	0	2	1	0	2	0	0	0	0	0
Norfolk	0	0	2	1	0	0	0	0	1	1	0
Plymouth	0	15	11	12	1	16	3	3	4	72	0
Suffolk	0	0	0	0	0	0	0	0	0	0	0
Worcester	0	29	85	36	6	12	9	1	7	95	0
Total	3	199	341	155	27	129	35	26	33	473	9
Combined Totals	725					223				473	9
Total	1,430										

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955—*Continued*

County	CIVIL CASES										
	Table 10 — Cases Marked Inactive During the Year										
	Jury					Non-Jury				Equity	Divorce and Nullity
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	1	18	14	7	0	16	0	0	1	27	0
Berkshire	0	7	0	4	2	10	0	1	3	38	0
Bristol	0	43	69	30	0	31	8	5	0	62	0
Dukes	2	5	0	0	0	4	0	0	0	0	0
Essex	0	29	45	22	0	29	5	4	3	85	0
Franklin	3	3	11	2	0	3	0	0	0	24	0
Hampden	0	46	105	36	8	21	0	1	5	61	0
Hampshire	0	4	5	3	3	0	0	0	5	11	17
Middlesex	0	60	157	284	1	32	29	3	9	95	0
Nantucket	0	1	2	0	0	0	0	0	0	0	0
Norfolk	0	8	19	6	1	4	7	0	4	4	0
Plymouth	0	24	29	15	2	11	5	1	5	94	0
Suffolk	50	126	636	300	65	88	75	24	94	414	0
Worcester	18	51	131	62	3	31	16	6	4	74	0
Total	74	425	1,223	771	85	280	145	45	133	989	17
Totals	2,578					603				989	17
Total	4,187										

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1955—*Continued*

County	CIVIL CASES											Table 12	
	Table 11 — Inactive Cases Dismissed During Year											Number of Days in which Court Sat	
	Jury					Non-Jury				Equity	Divorce and Nullity	Jury	Non-Jury Including Equity and Motion and Pre-Trial Sessions
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others				
Barnstable	0	25	6	7	0	29	0	4	4	23	0	22	22
Berkshire	0	17	12	6	0	22	1	0	1	40	0	35½	18
Bristol	0	41	48	18	3	27	4	2	9	94	0	152	30
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	4
Essex	0	69	67	57	2	24	5	1	7	91	0	266	82
Franklin	1	3	8	3	0	6	0	0	0	14	0	36	3
Hampden	0	58	113	39	8	85	9	8	6	122	0	185	89
Hampshire	0	39	10	5	5	3	2	3	3	33	19	34	3½
Middlesex	3	17	85	59	0	19	40	4	0	33	0	625	200
Nantucket	0	0	0	0	0	0	0	0	0	0	0	0	3
Norfolk	0	8	12	8	0	6	1	1	0	1	0	147	19
Plymouth	0	35	21	13	2	17	4	0	5	143	0	88	29
Suffolk	26	103	327	171	53	163	68	36	103	215	8	1,022	858
Worcester	6	24	50	19	0	12	4	3	1	89	0	282	92
Total	36	439	759	405	73	413	138	62	139	898	27	2,894½	1,452½
Combined Totals	1,712					752				898	27	4,347	

*Worcester: Fitchburg 54
Worcester 228

REPORTS OF REGISTERS OF PROBATE FOR YEAR ENDING DEC. 31, 1954

	Probate Decrees																Divorce			Fees Collected				
	Original Entries	Administrations Allowed	Wills Allowed	Guardians Appointed	Conservators Appointed	Trustees Appointed	Accounts Allowed	Real Estate Sales	Real Estate Mortgages	Real Estate Partitions	Equity Decrees	Separate Support	Desertion and Living Apart	Custody	Other Decrees	Papers Recorded	Original Entries	Decrees and Orders Entered		Probate	Divorce	Certificates and Copies	Total	Commitment, Insane Feeble Minded
																		Nisi	Others					
Barnstable	542	167	233	27	10	18	387	102	3	5	21	8	1	2	259	2,494	148	103	22	$3,479.40	$740.00	$2,522.33	$6,741.73	3
Berkshire	999	370	230	67	66	90	579	196	12	6	11	29	12	8	359	5,036	294	202	107	5,606.00	1,525.00	2,844.23	9,975.23	4
Bristol	2,154	772	599	134	65	59	711	421	13	11	23	49	6	5	1,534	7,422	766	529	528	10,386.00	3,797.00	5,539.50	19,722.50	10
Dukes	91	38	34	2	2	7	47	18	0	3	2	0	0	1	26	467	12	12	16	607.00	60.00	336.15	1,003.15	0
Essex	3,339	1,318	974	296	141	121	2,170	638	11	6	48	50	14	18	1,624	9,501	311	591	328	18,686.00	4,055.00	10,094.08	32,835.08	—
Franklin	471	111	116	22	35	16	187	49	1	1	4	2	1	2	130	2,142	91	80	30	2,488.00	455.00	1,212.70	4,177.50	3
Hampden	2,032	752	510	135	97	59	1,734	272	12	19	80	67	8	11	1,146	11,673	898	588	886	12,058.00	4,490.00	6,279.05	22,827.05	24
Hampshire	509	299	161	27	18	16	372	90	3	4	17	6	5	0	353	2,497	43	31	30	3,022.00	215.00	1,290.20	4,527.20	5
Middlesex	6,719	2,357	1,819	541	249	268	4,330	1,032	58	22	82	171	8	36	5,084	24,851	1,820	1,220	1,731	38,557.00	8,930.00	25,657.40	73,144.40	111
Nantucket	45	16	18	3	1	1	36	11	0	0	0	0	0	0	40	232	7	5	2	302.00	35.00	161.60	498.60	0
Norfolk	2,925	932	879	257	134	201	2,473	443	20	11	64	55	7	13	1,712	12,347	548	345	614	18,760.00	2,740.00	13,769.75	35,269.75	15
Plymouth	1,532	672	356	102	45	40	1,157	274	15	16	25	56	11	4	1,643	7,713	532	320	930	8,656.00	2,360.00	4,134.95	15,150.95	21
Suffolk	5,595	2,121	1,099	426	225	211	3,652	550	28	17	130	1,069	12	39	2,323	26,091	1,863	1,146	2,190	33,190.00	9,300.00	16,999.35	59,489.35	1,642
Worcester	3,470	1,484	980	328	215	112	1,457	499	18	19	75	203	6	9	1,984	10,419	1,144	708	737	17,547.00	5,740.00	8,585.35	31,872.35	48

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